



**GOVERNMENT OF SAMOA  
OFFICE OF THE ATTORNEY GENERAL**

# **LEGISLATIVE DRAFTING HANDBOOK**

**LEGISLATIVE DRAFTING REQUIREMENTS  
APPROVED BY THE ATTORNEY GENERAL  
FOR USE IN SAMOA FROM JULY 1 2008**

**Prepared by the Legislative Division  
of the Office of the Attorney General**

**With assistance from  
Legislative Drafting Consultant  
Graham Bruce Powell BA LLB (Hons)**



## **FOREWORD BY THE ATTORNEY GENERAL**

The proposal to prepare a Legislative Drafting Handbook has been under contemplation for many years. The preparation of this Handbook has been a particular priority of mine since taking office. I am satisfied that this Handbook prescribes the technical requirements for the drafting of Acts and all types of subordinate legislation in Samoa. From July 1, 2008 all laws drafted for Samoa must comply with the requirements and standards noted in the Handbook.

Over the years my Office has been presented with a great many draft laws that have failed to meet the most basic technical assessments and quality tests. Large amounts of time and financial resources have been committed to the drafting of legislative reforms, and in too many cases the quality of the legislative output has not justified the resources committed to their preparation. The purpose of retaining the services of consultant drafters is to apply their expertise and to lessen the considerable burdens which are placed on the legislative drafters in my Office. All too often the expertise has not been evident and the workload of my Legislative Division has been added to by deficient drafting. The fact that Samoa has and enjoys a pre-eminent position and reputation in the South Pacific region in the context of legislative reform reflects, in a very large measure, the efforts and hard work of the legislative drafters in my Office. I am satisfied that their work shall be assisted by the preparation of this Handbook and the application of its requirements.

The various Samoan Ministries and government agencies have played a pivotal role in achieving some very remarkable law reforms in Samoa, and securing its considerable reputation as a nation which is capable of keeping its laws current and responsive. The provisions of Part I of this Handbook note the roles that are played by Ministries and agencies and detail some practical steps which shall ensure that adequate preparations for pursuing law reform are applied by the relevant officers of sponsoring Ministries and agencies.

I acknowledge the contribution by my staff to the finalisation of this important project. I thank Graham Powell for applying his experience as a legislative drafter and reformer in Samoa and other countries of the South Pacific, and for sharing this experience with my officers.

I also express my appreciation to the Public Sector Improvement Facility for supporting this project, and for the effective utilisation of the financial support provided by the Governments of Australia and New Zealand for important capacity building projects of this nature. I also wish to thank the support and input of the Clerk of the Legislative Assembly and her staff to this handbook.

Aumua Ming Leung Wai  
Attorney General  
1<sup>st</sup> July 2008



## ACKNOWLEDGEMENTS

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The Legislative Division of the Office of the Attorney General contributed to the preparation, review and modification of this Handbook. Chapters 1-5, which form Part I of this Handbook, are based on three Issues Papers which were discussed and approved in their final form by the entire legislative team.

The following officers made specific contributions to the Chapters of this Handbook identified below –

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## **PART I**

### **THE ROLE OF GOVERNMENT MINISTRIES AND AGENCIES IN LEGISLATIVE REFORM**

#### **1. BACKGROUND**

##### **1.1 The Legislative Drafting Handbook Project**

The Office of the Attorney General of Samoa in conjunction with the Clerk of the Legislative Assembly of Samoa initiated a project under the name of the “**Legislative Drafting Handbook Project**”. This project was implemented with assistance from the Public Sector Improvement Facility and utilises funds provided to the PSIF by the Governments of Australia and New Zealand.

The key tasks undertaken under this project were to -

- (a) Analyse the legislative processes in place in Samoa;
- (b) Analyse the full range of legislative matters, issues of governance and government administration, legal practice and social organisation in Samoa which may impact upon the form, nature and content of legislation;
- (c) Analyse problems faced in implementing previously drafted laws and how it could have been avoided;
- (d) Consider a process to be adopted in the preparation for drafting legislation;
- (e) Prepare a Handbook for Legislative Drafting in Samoa setting out;
  - (i) Approach to be taken in preparation for drafting legislation;
  - (ii) Issues to be considered when drafting legislation and the weight to be given to each issue;
  - (iii) Procedures to be followed when drafting legislation;
- (f) Produce 100 copies of the legislative drafting handbook;
- (g) Conduct training on using the legislative drafting handbook; and
- (h) Submit a digital form of the legislative drafting handbook.

##### **1.2 The Purpose of this Part**

This Part identifies the key roles played by all relevant persons and specifically by government Ministries, agencies and institutions in the legislative process in Samoa.

An important feature of this Part is the identification of practical steps which should be undertaken before legislative reforms are embarked upon, and also when the processes are applied to legislative initiatives undertaken by government Ministries and agencies.

If these steps are followed there is a very strong likelihood that effective and timely law reform shall be achieved.

This Part should be a useful reference for all government officers when they participate in legislative reform. It shall also provide a benchmark for determining the effectiveness of the roles that individuals and agencies have played, and the contribution that they have made to the development of the laws of Samoa.

## **2. PRINCIPAL ROLES IN THE LEGISLATIVE PROCESS**

### **2.1 The key players**

Essential roles are played in the legislative process by -

1. Ministries and agencies
2. Office of the Attorney General
  - 2.1 Attorney General
  - 2.2 Parliamentary Counsel
  - 2.3 Law Reform Commission
3. Ministry of Finance – Aid Coordination Unit
4. Ministers
5. Cabinet
6. The Clerk of the Legislative Assembly
7. Legislative Assembly

The nature of these roles is clarified in Appendix A.

### **2.2 Ministries and agencies**

Government Ministries and agencies play key roles in every stage of the legislative process in Samoa. This role begins with the primary policy making responsibility, extends to many aspects of the implementation and management of legislative reform, and continues with on-going administrative, regulatory and enforcement roles after laws are brought into effect.

The nature of these many roles is clarified in Appendix B.

## **3. DEFINING THE ROLE OF MINISTRIES AND AGENCIES IN LEGISLATIVE PROCESSES**

### **3.1 An overview of the roles of ministries and agencies**

The Ministries and agencies have important roles to play as –

- Policy makers
- Proposers of legislative reform
- Agents of legislative reform
- Managers of legislative reform
- Implementers
- Regulators
- Enforcers

The nature of these roles is clarified in Appendix B.

### **3.2 The key ministry and agency officers and their roles**

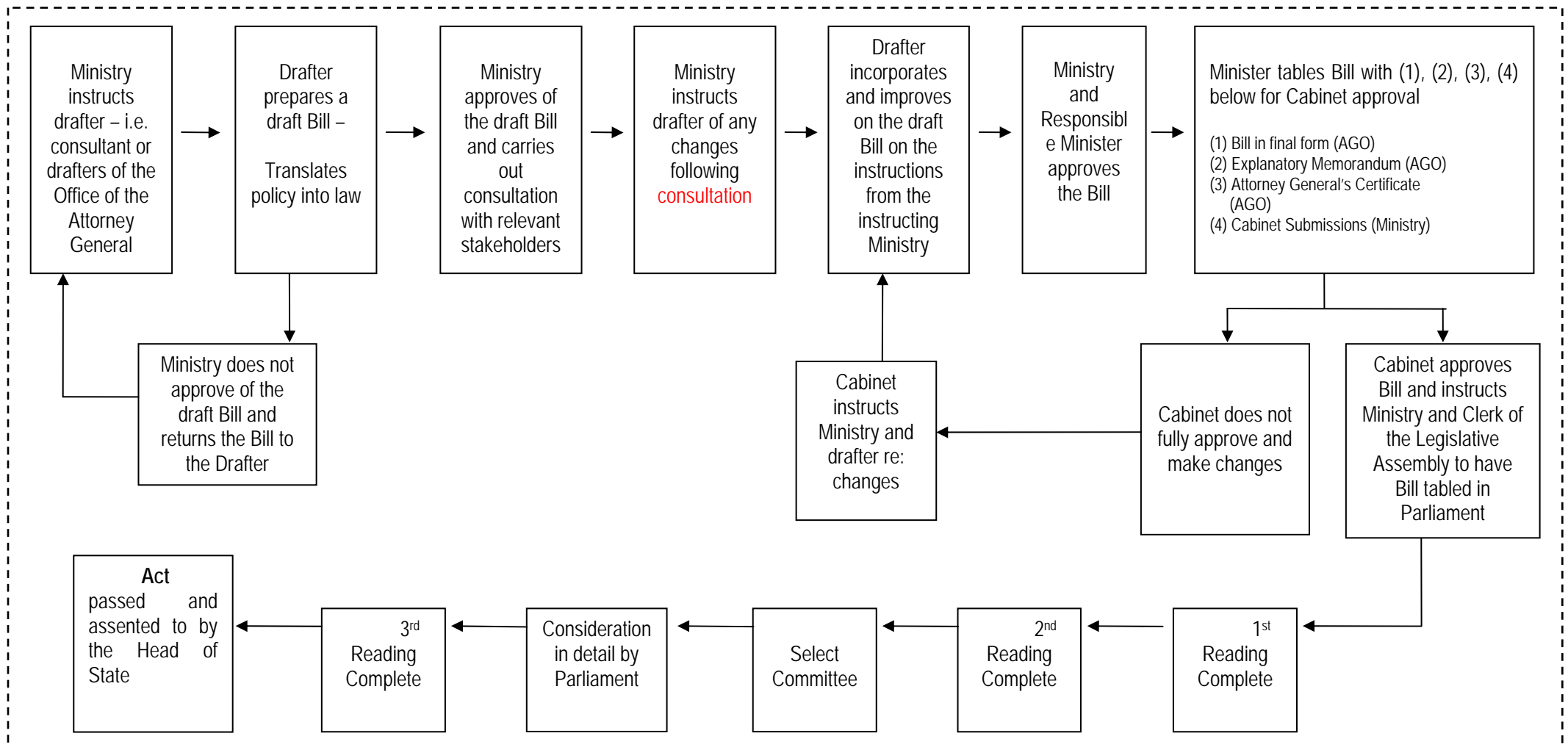
Appendix B clarifies the roles to be played within Ministries and agencies by -

- The Minister
- The Chief Executive Officer
- Other Senior Officers
- The Legal Officer

The flow charts on the next pages depict key elements of the legislative process in Samoa, and some of the key roles to be played.

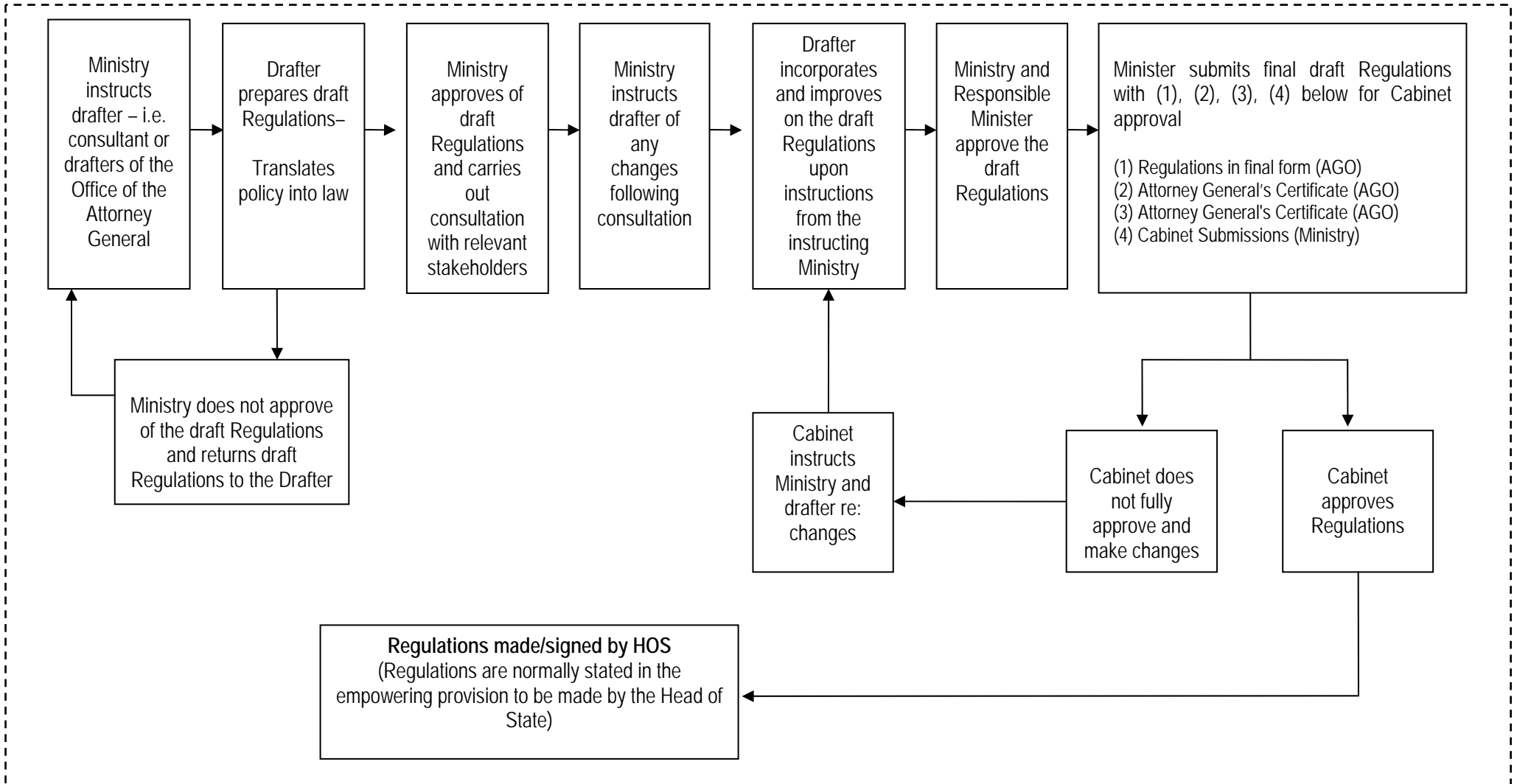
### Flow Chart – Legislative Process for Drafting Acts

#### FROM INSTRUCTIONS TO ACT OF PARLIAMENT



### Flow Chart – Legislative Process for Drafting Regulations

#### FROM INSTRUCTIONS TO REGULATIONS



## **4. PREPARATIONS FOR LEGISLATIVE REFORM**

### **4.1 Preparations within the Ministry or Agency**

Prior to the commencement of drafting it is advisable that an appropriate officer or officers of the Ministry or Agency be appointed as the coordinator of the drafting project. This officer should report on a regular basis to the CEO and be the principal liaison officer, both within the Ministry or agency and with other relevant offices and persons who are identified in this Paper.

The nominated officer should make contact with the AGO upon his or her appointment.

Other preparatory work includes –

- Identifying all relevant reports and previous recommendations (and making copies of these available).
- Setting aside workspace for consultant drafters which should preferably include internet access and standard office stationery and support.  
[Note: Under some externally funded projects the provision of adequate office space and support facilities is a contractual obligation of the Government of Samoa. The existence and extent of such obligations should be confirmed].
- Identifying all stakeholders and giving them initial notification of the proposed work, including its nature and scope and its potential impacts.
- All relevant officers within the Ministry or agency should be notified of the proposed work by written notification, or at a meeting convened for this purpose. They should give careful consideration as to how the project may impact upon them or be of benefit to the performance of their duties and responsibilities.
- If the law is to be drafted by officers of the Attorney General's Office then the requirements of that Office need to be ascertained from Parliamentary Counsel. This may include the preparation of detailed Drafting Instructions or a Concept Brief to outline the purpose and objectives of the proposed legislative reform, and to identify the key provisions of it.
- If the services of consultant drafters are to be retained then Terms of Reference must be devised in the most appropriate manner to achieve the required drafted outputs and outcomes. These should be confirmed with the AGO.
- Appropriate contractual provisions must be included in all contracts for consultant drafters. These should specify the required reporting outcomes including the review of relevant laws, the report of consultation outcomes and a final report highlighting key aspects of the draft law and its implications for Samoa. All contracts shall be subject to AGO approval.

### **4.2 Liaison with MOF – Aid Coordination Unit**

It should be confirmed whether the Aid Coordination Unit of the Ministry of Finance has a role to play in relation to a particular legislative reform.



The expectations of the Unit should be ascertained.

Arrangements must be made to ensure that the expectations and requirements of the Unit are met during the legislative process.

### **4.3 Liaison with the AGO**

The Attorney General should be requested to nominate one or more officers as the representatives of the AGO for the particular legislative reform. This should be done at the earliest opportunity.

Other matters to be confirmed by the nominated officer of the AGO without undue delay are -

- (a) Confirmation that legislative reform is necessary (i.e. that the current laws are inadequate to meet the objectives of the reform).
- (b) The AGO's requirements as to process and reporting requirements. These requirements will include the mandatory provision of an explanatory memorandum in the required form. They may include the preparation and provision of a Review of Related Laws and other reporting requirements relating to consultation outcomes etc.
- (c) If the drafting is to be undertaken by officers of the Attorney General's Office, the requirements of that Office must be ascertained from Parliamentary Counsel. The provision of Drafting Instructions of a Concept Brief may be required to provide detailed and technical guidance for the legislative drafting.
- (d) Confirmation of terms of reference and selection criteria for retaining consultant drafters, if the services of such consultants are to be retained by the Ministry or agency.
- (e) Any element of urgency that may require departures from standard legislative processes e.g. priority for drafting, urgent referral to Cabinet and arrangements for speedy enactment.

### **4.4 Dealing with funding and development agencies**

It should not be thought that development agencies invariably implement effective legislative reform in the course of their projects. In Samoa's recent history there are few examples of the effectiveness that would normally be assumed.

It is therefore crucial that officers of Ministries and agencies become involved in all aspects of development project planning, design and implementation from the outset, and at every project phase. This is true for all aspects of development projects, but in the context of their legislative reform components the following action should be taken in every case –

- (a) The need for legislative reform, and its nature and scope must be ascertained at the outset (and in consultation with the AGO).
- (b) The terms of reference applying to the legislative components must ensure a useful outcome, and must reflect the legislative process and drafting requirements stated in the legislative drafting handbook.
- (c) The selection process for consultant drafters must ensure that a consultant with proven expertise and experience is retained, and that the requirements of the AGO are met in every particular.
- (d) Consultant drafters must be required to engage with the AGO at critical project phases, and comply strictly with the requirements and directions imposed by the nominated AGO officers.
- (e) The outputs of consultant drafters must be approved by the Ministry or agency and the AGO before consultants are released from their obligations under their contracts.

#### **4.5 Funding of law reforms (payment by government corporations)**

It is important that Ministries and agencies identify sources of sufficient funds for legislative drafting. If external funding is available then this should be utilised in order that the AGO may be relieved of its increasing legislative burden.

Government Ministries are not charged by the AGO for any legislative work. Government corporations however will be obliged to pay for the legislative drafting services provided by the AGO. This expense should be ascertained before the AGO is retained to undertake the drafting work and adequate funds must be made available for this purpose. The payment must be processed to the AGO in accordance with its standard terms of payment.

### **5. MANAGING LAW REFORM IN A PRACTICAL WAY**

#### **5.1 Liaising with Parliamentary Counsel**

Regular contact should be maintained with Parliamentary Counsel by the means indicated by the PC, and in accordance with a program of meetings or briefings indicated to the appointed officer of the Ministry of agency.

Any matter that may arouse controversy or that appears to be a departure from the drafting requirements stated in the legislative drafting handbook must be immediately notified to Parliamentary Counsel in writing.

Great demands are placed on the work of the Legislative Division of the AGO but it is the duty of the Ministry or agency to ensure that important matters are brought to the attention of Parliamentary Counsel, and that these matters are acted upon.

It is appropriate to give reminders to Parliamentary Counsel and to identify matters of urgency. Where time limits apply to any matter these must be brought to the attention of Parliamentary Counsel, and reminded as appropriate, in the clearest terms.

If necessary it is appropriate for any matter to be brought to the attention of the Attorney General by the relevant Chief Executive Officer or Minister.

## **5.2 Liaising with the Law Reform Commission**

The practices and procedures of the Law Reform Commission shall be determined as a matter of priority when this unit of the AGO is brought into operation.

The appointed officer of the Ministry or agency should become aware of the relevant procedural requirements and practices and ensure that effective contact is maintained with the Law Reform Commission, if the LRC is appointed to have a role in the specific law reform project. The roles of the LRC shall be both facilitative and supervisory.

## **5.3 Ensuring adequate involvement of the Ministry or agency**

The Ministry or agency has the status of “client” in any law reform project, and should be willing and able to give appropriate instructions and to supervise the work undertaken on its behalf by consultant drafters and other persons involved in the implementation of any reform project.

The relationship must be maintained on a professional basis but all consultant drafters and other project officers must be held accountable for the standard of their work. It is their role to contribute to the national interest of Samoa in every way, and only Samoa. Making sure that this is the case is the principal obligation of the Ministry or agency.

The Attorney General also has an understanding with the Chief Executive Officer of the Ministry of Finance that the Attorney General will bring to said Chief Executive Officers' attention any law that could affect or relate to the State's finances.

## **5.4 Ensuring broad stakeholder consultation**

Broad stakeholder consultation is an essential feature of nearly all successful law reform. It is the primary responsibility of the Ministry or agency to identify stakeholders and to facilitate their effective involvement in a legislative reform project.

The extent of stakeholder representation and the means by which stakeholder consultation is to be undertaken must be discussed in detail with consultant drafters and other project officers.

In most cases the appointed officer of the Ministry or agency shall play the key role in facilitating the consultation processes.

The appointed officer and other officers of the Ministry or agency should also play a key role in making presentations and giving explanations at consultative meetings. And it is crucial that a record is made of consultation outcomes.

The Attorney General has also been authorised by the Prime Minister to give draft Bills upon their referral to Parliament, to the Legislative Committee of the Samoa Law Society for their comments if any.

## **5.5 Applying government policies**

The fundamental policies of the government which impact upon a legislative reform must be identified, notified to consultant drafters and applied in relation to all aspects of the legislative reform.

Where new policy formulation can assist the reform then this should be undertaken, and approval for it should be sought. Where existing policy may be contrary to any proposed reform then a variation of the policy should be sought. This will involve making a submission to Cabinet and seeking the government's endorsement for any shift in policy.

As has been noted in this Paper, the early endorsement of Cabinet for the proposed legislative reform can facilitate the process and be of real assistance to the eventual achievement of the reform objectives.

## **5.6 Managing consultant drafters**

The responsibility to effectively manage consultant drafters (and other project officers) has been referred to in numerous sections of this Paper. This is a critical responsibility and involves regular (even daily) oversight.

Some essential aspects of this responsibility include –

- Ensuring that the requirements of the legislative drafting handbook are known and followed.
- Ensuring that the relevant Terms of Reference are adhered to (or changed if necessary).
- Ensuring that contact is maintained with the AGO, and that relevant matters are brought to the specific attention of Parliamentary Counsel.
- Ensuring that effective stakeholder consultation is undertaken, and that its outcomes are recorded.
- Ensuring that deadlines are adhered to.
- Ensuring that all required outputs are delivered in an acceptable form before any release is given from contractual obligations, or any approval for payment is made.

## **5.7 Ensuring adherence to drafting requirements**

It is a fundamental obligation of the sponsoring Ministry or agency to ensure that the requirements stipulated in the legislative drafting handbook, and any other requirements articulated by the AGO, are observed and reflected in all outputs.

A copy of the handbook must be provided at the commencement of the drafting. If it is not available within the Ministry or agency then the consultant drafter must be advised to obtain a copy, and comply with its requirements.

The appointed officer of the Ministry or agency must be familiar with these requirements and should be able to bring them to the attention of consultant drafters to discuss their effect and application. If any doubt or disagreement arises this must be brought to the attention of Parliamentary Counsel without delay, and a final and binding decision shall be made.

## **5.8 Reporting problems to AGO**

As noted in various sections of this Paper, it is acceptable and often important that matters be brought to the attention of the Attorney General, and this is particularly so if –

- Any delay may prejudice the national interest by resulting in the loss of revenue or the causing of any other disadvantage to government.
- Any important matter requiring approval or input from the AGO has not been addressed in the necessary time frame or manner.
- Any dispute has arisen within government as a result of any proposed reform, or if there is any possibility of such a dispute arising.
- Any opposition to the reform has arisen which may impact on the legislative process or cause embarrassment to government in any way.

### CHECKLIST FOR PREPARATORY ACTIVITIES

Step	Preparatory Activity	<i>Tick</i>
1	Confirmation of funding for the law reform project	
2	Appointment of Ministry/agency officer to be project coordinator	
3	Notification of appointment to AGO (and Law Reform Commission, if relevant)	
4	Meeting with Parliamentary Counsel to confirm – <ul style="list-style-type: none"> <li>• Need for legislative reform</li> <li>• Need for consultant drafter</li> <li>• Reporting and other procedural requirements</li> </ul>	
5	Notification of appointment to MOF – Aid Coordination Unit (and all requirements of the Unit to be confirmed)	
6	Identification of all relevant policies, reports, previous recommendations for legislative reform etc.	
7	Identification of all relevant stakeholders	
8	Advice to all relevant stakeholders of proposed reform	
9	Notification to and liaison with all senior officers of the Ministry/agency	
10	Preparation of appropriate terms of reference for consultant drafter	
11	Confirmation of ToR by AGO	
12	Assessment of selection criteria for consultant drafter	
13	Confirmation of criteria by AGO	
14	Confirmation of appropriate contractual requirements by AGO, including: <ul style="list-style-type: none"> <li>• Practical timeframe</li> <li>• Obligation to comply with Handbook requirements and AGO directives (Payment to be subject to compliance)</li> <li>• Preparation of Review of Relevant Laws</li> <li>• Obligations to liaise with and report to AGO</li> <li>• Obligations to undertake stakeholder consultations</li> <li>• Reporting obligations (including report of consultations and consultation outcomes, general report on drafting process etc)</li> <li>• Preparation of Explanatory Memorandum</li> </ul>	
15	Provision of workspace and support to consultant drafter (to be in accordance with any obligation under development assistance agreement)	

## CHAPTER 6

### INTRODUCTION TO LEGISLATIVE DRAFTING IN SAMOA

#### 6.1 Purpose of this Section

This Section is designed to provide clear guidance for all persons drafting laws for the Government of Samoa.

It is expected that the many previous deficiencies in drafted legislative outputs shall be avoided in the future by this statement of comprehensive drafting requirements, and the requirement that the provisions of this Handbook are to be applied when all laws are drafted.

Whilst a principal target group for this Handbook is the consultant drafters who are engaged directly for legislative drafting purposes by the Government of Samoa, or by a range of development agencies providing assistance to the Government of Samoa, it should also prove to be a useful reference document for –

- Drafters employed by the Government of Samoa.
- Legal Officers in Ministries which are undertaking legislative reform, or which are proposing to do so.
- Other officers of Ministries and government agencies whose work involves review and reform of the laws which apply to the functions and responsibilities of their Ministries and agencies.

#### 6.2 Requirement to adhere to this Handbook

All matters identified in this Handbook are to be regarded by consultant drafters, and the officers of the Samoan Government who retain their services or manage their engagement, as mandatory drafting requirements.

Where any doubt arises as to the applicability or efficacy of any matter in any particular circumstance, then the matter should be referred to Parliamentary Counsel at the earliest opportunity. Where appropriate Parliamentary Counsel shall seek the view of the Attorney General, and any necessary directions or modifications shall be determined and communicated to the Ministry or agency undertaking the law reform.

#### 6.3 General requirements for consultant drafters

The Attorney General has determined that the following general requirements shall apply to the engagement of consultant drafters and to their work –

- All consultant drafters must hold a degree in law and have relevant legislative drafting experience, preferably in Samoa or a country with similar governance and legislative processes and institutions.

- When tendering or applying for legislative drafting work in Samoa, all consultant drafters must provide a full list of laws which they have drafted, and must state the extent of their involvement in the drafting of each of the laws (i.e. as the sole drafter, a co-drafter, or a contributor in some other way). If called upon the consultant drafter must be able to prove that the information provided is correct.
- All consultant drafters must comply with every requirement stipulated in this handbook and with any other direction given by the Attorney General or Parliamentary Counsel. Drafters must be willing to render additional assistance if called upon to achieve final enactment of their drafted laws, even if such assistance is called for after the finalisation of their contracted tasks.

## **6.4 Finding the laws of Samoa**

The following provisions highlight some of the difficulties in locating the full range of laws applying in Samoa, and may assist in overcoming the problems of accessing current and true copies of the laws.

Problems of accessing the Acts of the Samoan Parliament, and of ascertaining that they are current and complete, have been largely overcome in recent times by the consolidation of all Acts up to 31<sup>st</sup> December 2007.

The Regulations and other subordinate legislation remain unconsolidated and are more difficult to locate and verify. This problem will take some time to rectify.

### **6.4.1 The consolidated Acts of the Samoan Parliament**

Persons drafting laws for the Government of Samoa may be given access to the consolidated Acts held by the Office of the Attorney General. These may not be distributed to any other person, and conditions may be placed on any rights of access to them.

Each of the consolidated Acts has been certified by the Attorney General as being up to date to December 2007, and as forming part of the official laws of Samoa. It is intended that they shall be reviewed, up-dated and re-certified at the end of each year.

Reliance should only be placed on the certified versions of the Acts. The laws which appear in the PACLII and other internet sites are not official versions of Samoa's laws.

It is an offence under the *Revision and Publication of Laws Act 2008* to alter any official version of an Act or to publish or distribute them without the approval of the Clerk of the Legislative Assembly.



#### **6.4.2 Notifying errors found in the consolidated Acts**

All persons who identify errors in the consolidated Acts are asked to bring these to the attention of Parliamentary Counsel.

#### **6.4.3 The “Red Book”**

The Clerk of the Legislative Assembly has published a full listing of Samoa’s Acts, and periodically up-dates this publication. As it is usually published in a red cover it is referred to in this Handbook as the “Red Book” for ease of reference.

This publication is a very useful resource and can assist to –

- Identify all current Acts of the Samoan Parliament
- Ascertain when amendments were made to the Acts
- Identify regulations and other subordinate legislation made under the authority of each Act
- Identify the laws repealed by each current Act
- Identify the Volume in the previous Reprint of Laws in which the Act may be found (although these are not likely to be the most up to date versions of the Act)

#### **6.4.4 Accessing subordinate legislation**

As noted in 1.4.1 the task of locating regulations and subordinate legislation is not an easy one. The “Red Book” can be relied upon to identify if any regulations or other subordinate legislation have been made under an Act, and it will state their title and the year in which they were made (including the number given to them at the time of their promulgation).

Inquiries by consultant drafters should be directed to Parliamentary Counsel who may be able to provide access to regulations. The Office of the Clerk of the Legislative Assembly may be able to offer copies for sale, but otherwise the Clerk must not be burdened by inquiries in relation to the accessibility of subordinate legislation.

#### **6.4.5 Pre-Independence laws**

The following pre-independence laws (referred to as Ordinances) are of importance and still apply in Samoa –

- Animals Ordinance 1960
- Arms Ordinance 1960
- Bankruptcy Act (NZ) 1908
- Banking Ordinance 1960
- Burials Ordinance 1961
- Co-operative Societies Ordinance 1952
- Coroners Ordinance 1959
- Crimes Ordinance 1961
- Divorce and Matrimonial Causes Ordinance 1961
- Dog Registration and Control Ordinance 1955
- Evidence Ordinance 1961
- Indecent Publications Ordinance 1960
- Infants Ordinance 1961

- Judicature Ordinance 1961
- Legislative Assembly Powers and Privileges Ordinance 1960
- Measures Ordinance 1960
- Police Offences Ordinance 1961
- Regulations Ordinance 1953
- Road Traffic Ordinance 1960
- Samoan Antiquities Ordinance 1954
- Shops Ordinance 1961

## **6.5 Some important laws**

Some key sections of Acts of particular relevance to legislative drafting for the Samoan Government are noted in the following provisions.

### **6.5.1 Acts Interpretation Act 1974**

This is an important law which drafters should consider in the context of all legislative drafting.

Under section 2 this Act applies to all other Acts, but the provisions of this law cannot override the object or purpose of any other law, or affect any specific definition provided for in any other law.

General definitions are stated in section 4, but it is appropriate to re-state these, if they are relevant, in the definition section of any new law for ease of reference

Under section 4(2) any reference in any law to the “Gazette” is to be read as including a reference to the “Savali”. It is no longer necessary in any law to make reference to the “Gazette” and all requirements as to notification etc are to refer to the Savali as the appropriate means to publish such notifications.

The general rules of construction stated in section 5 are important and must be taken into account in all legislative drafting.

References to “persons” committing offences shall apply to companies also (section 6).

Any law which does not provide for the date of its commencement is deemed to commence from the date of its assent (section 8).

It is important to note that regulations may make provision for powers to be exercised by the Head of State, Ministers and any other persons or bodies under the authority of the regulations (section 24). Such provisions do not offend principles of the common law which restrict the exercise of delegated powers.

### **6.5.2 Regulations Ordinance 1953**

Drafters should be familiar with the provisions of this pre-Independence law when drafting regulations and subordinate legislations. Some of its provisions however are

now of little importance. This is particularly so in relation to the provisions which deal with the revision and publication of regulations.

Section 8 provides that if no commencement date is set in the regulations, then they shall take effect from the date on which they are made.

### **6.5.3 Revision and Publication of Laws Act 2008**

As noted in this Handbook a comprehensive revision and consolidation of the Acts of the Samoan Parliament current to December 2007 has been completed under the authority of this recently enacted law.

The key provisions of this Act are –

Section 3 Provides for the power of the Attorney General to authorise from time to time the preparation of consolidated and revised Statutes of Samoa.

Section 4 Provides for the power of the Attorney General to determine matters of form and process to be applied to the consolidation and revision of the Statutes and to approve an official version of the Statutes in the Samoan language.

It also declares that the official language of the consolidated and revised Statutes is to be in English.

Section 5 Provides for the power of the Attorney General to edit, amend and re-format the Statutes during the consolidation and revision process.

Section 6 Provides for that the approval of Parliament is needed for revisions in certain situations as outlined in this section, where the substance or meaning of the Act maybe affected.

Section 7 Provides for the copyright for all consolidated and revised Statutes to vest in the Government at all times and the right of the Clerk of the Legislative Assembly to give permission to any person to publish Statutes consolidated and revised under the authority of this Act, on the terms and conditions set by the Clerk.

Section 8 Provides for the power of the Clerk of the Legislative Assembly to decide any form in which to publish the revised Statutes, and to fix a charge for published laws.

Provides for the prosecution of those who publish the Statutes without approval of the Clerk of the Legislative Assembly.

Provides for the Clerk's power to approve the publication of the Statutes on the internet or by electronic means and the prosecution of those who publish these Statutes on the internet without permission from the Clerk.

Section 9 Provides for the Courts and persons exercising any judicial power to take judicial notice of the consolidated and revised Statute.

Section 10 Provides for the Clerk of the Legislative Assembly and the Attorney General to preserve integrity and to maintain back-up copies of the revised Statutes in a

secure location within Samoa, and a secure location outside Samoa. A third copy of the revised Statutes is to be lodged with the Registrar of the Supreme Court for the use of the Judiciary.

Section 11 Provides for the Statutes of New Zealand specified in the Schedule to continue to form part of the laws of Samoa so far as they are in force at the date of commencement of the Revision and Publication of Laws Act, and until they are amended or repealed.

Section 12 Provides for the Statutes of New Zealand which were repealed under section 8 of the repealed Act to remain for all time repealed.

Section 13 Provides for the repeal of the Reprint of Statutes Act 1972.

#### **6.5.4 *Fines (Review and Amendment) Act 1998***

This law applies the “penalty unit” concept to all fines and pecuniary penalties in Samoa’s laws. It amended all references in every law so that fines are now expressed as penalty units instead of in monetary amounts.

The penalty unit was fixed at \$100, and this has not been altered. It can be amended from time to time to ensure that the level of all fines is generally increased to keep place with inflationary trends.

#### **6.5.5 *Public Service Act 2004***

The provisions of the *Public Service Act 2004* make comprehensive provision in relation to all aspects of the appointment and employment of public servants. The provisions of this Act reflect the constitutional arrangements under Part VII of the Constitution which vest full power and responsibilities in this regard in the Public Service Commission.

Great care must be taken when drafting laws which provide for the appointment of public servants, and for their employment and management.

A greater degree of flexibility is permissible in this regard when laws establish public bodies outside of the public service. However if a law creates a body within a Ministry then the provisions of the Public Service Act must be strictly applied.

#### **6.5.6 *Ministerial and Departmental Arrangements Act 2003***

This law determines the titles of Ministries and heads of Ministries, and its relevant provisions are –

Section 4 Designates Ministries and determines their titles. [see Chapter 11]

Section 5 Gives the title of CEO to heads of Ministries (but retains references to the Commissioner of Police, the Comptroller of Customs and the Commissioner of

Inland Revenue – but these last two have been combined in practice under the office of the CEO of the Ministry of Revenue).

- Section 6 Provides that the Prime Minister may amend the titles of Ministries stated in the Schedule.
- Section 7 Provides for the Prime Minister to assign responsibilities to the designated Ministries and CEO's.
- Section 8 Deems references in laws to the abolished departments to be references to the appropriate designated Ministry.
- Section 9 Deems references in laws to the abolished officers to be references to the appropriate designated CEO.
- Section 10 Provides for the Head of State, acting on the advice of Cabinet, to make Orders to clarify the responsibilities of Ministries and CEO's (although arguably this is within the constitutional authority of the Prime Minister).

### **6.5.7 Public Finance Management Act 2001**

Section 129 of this law states that it is to prevail over all other laws in the event of any inconsistency.

The extensive provisions of this law are not summarised here, but the Parts of the PFM Act are under the following headings –

- Part II – Responsibility for Financial Management
- Part III – Fiscal Responsibility
- Part IV – Economic, Financial and Fiscal Policies
- Part V – Budgets and Appropriations
- Part VI – National Revenue Board
- Part VII – Public Monies and the General Revenue Fund
- Part VIII – Special Purpose Fund
- Part IX – Trust Fund and Trust Accounts
- Part X – Unclaimed Monies
- Part XI – Borrowing, Loans and Guarantees
- Part XII – Procurement and Contracts
- Part XIII – Public Bodies
- Part XIV - Financial Reporting
- Part XV – Surcharge, Offences and Discipline

It should be noted that no legislative reform can impose new or amended fees and charges, or seek to raise government revenues, without the matter having been first referred to and approved by the National Revenue Board (section 13(1), (j) and (k) and section 37(1)(e)).

### **6.5.8 Public Bodies (Performance and Accountability) Act 2001**

The provisions of this Act should be kept in mind in the context of any law reform which provides for institutional reform involving government corporations and other public bodies.

Care must be taken when considering and applying the provisions of this Act. It makes reference to the *Companies Act 2001* which is not in force as at the date of

publication of this Handbook and has been the single most protracted law reform project ever undertaken in Samoa.

The complex provisions of this law are not summarised here but reference to this Act must be made if a legislative reform impacts upon the establishment or operations of government entities. In particular the “accountability” provisions of Part VI relating to corporate planning and financial reporting must be considered.

## **6.6 Placing draft laws in the overall legislative context**

For new laws to effectively meet the requirements of Samoa care must be taken to ensure that each specific law reform does not contradict or unnecessarily duplicate existing laws. It is essential that time is taken to place each new law reform in its legislative context *viz-a-viz* all current laws of Samoa, and all laws which have been proposed and which are under consideration by the Government of Samoa. This can be best achieved by the preparation of a review of laws relevant to the matters under consideration in the manner and for the purposes stated below.

### **6.6.1 A Review of Relevant Legislation**

It is a general requirement that a *Review of Relevant Samoan Laws* be prepared in the form of a report at an early stage of each law reform project, and prior to the commencement of drafting. This is to ensure that any proposed law fits correctly into the existing legislative framework, and also takes account of other recently proposed legislative initiatives.

Precedents for reviews of this nature can be obtained from Parliamentary Counsel.

All *Reviews of Relevant Laws* should be divided into appropriate classifications of relevant laws. For each law that is determined to be of relevance, the following matters should be noted in the Review –

- The correct title of the law
- The year the law was passed
- The date of the law’s commencement
- The number of amendments made to the law and the years these were made
- The laws repealed at the time the law came into effect
- The government ministry or agency principally responsible for the administration of the law (unless there is no clearly defined responsibility in relation to a particular law)
- The main object of the law
- The relevance of the law to the Review
- The substance of the relevant sections

Draft laws that have not yet been enacted should be termed as “Bills”, and drafted Regulations that have not yet been promulgated should be identified as drafts.

### **6.6.2 Laws to be necessary and relevant**

From the *Review of Relevant Laws* it should be able to be determined that a proposed law is both necessary for Samoa's purposes and relevant to the needs and interests of its government and people.

All draft laws must be both necessary and relevant.

### **6.6.3 Laws to be harmonised**

The *Review of Relevant Laws* should facilitate the harmonisation of laws. In this way, where it is identified that a relevant law which is currently in force has been drafted in a style or form appropriate for a proposed law, or contains specific provisions similar to those proposed under the new law reform, similar styles or provisions should be applied to the new law.

For example, where a new law proposes to establish a statutory corporation or entity then this should be done in substantially the same manner as is provided for in any current law which creates a similar body.

Where a new law involves the creation of a regulatory regime and the exercise of regulatory powers, then these should reflect current arrangements applying to similar regulatory bodies.

Where it is proposed to vest powers of enforcement in a new law, then these should be framed to be consistent with existing legal powers of a similar nature.

These matters must be kept in mind to achieve an appropriate degree of harmonisation in Samoa's laws.

## **6.7 Care when basing drafts on laws from other jurisdictions**

The option of simply taking laws from other jurisdictions and making minor changes to give the appearance that they are thereby applicable to Samoa will not prove to be the easy option. Many attempts have been done to do this in the past. Sometimes even the references to the jurisdiction of their origin have not been modified.

It is now the firm policy of the Attorney General that such drafts will be rejected if they do not conform strictly to the requirements of this Handbook, or if they do not serve the national interest of Samoa.

It shall be a requirement in every case where laws are drafted from laws applying in other jurisdictions that this be notified to Parliamentary Counsel in the clearest terms.

There should be no automatic assumption that because the drafter believes the processes, concepts and actual provisions to have been successful in foreign jurisdictions that they will find acceptance in Samoa. In such cases every feature of

such laws shall have to be fully justified and agreed to by the key Samoan stakeholders.

### **6.8 Care when using “model” laws**

The experience with model laws suggested by regional and international agencies for adaptation for Samoa’s purposes has not always been a beneficial one. The draft model *Marine Pollution Prevention Bill* prepared for the South Pacific region in the 1990’s took fully 7 years to be usefully adapted for Samoa.

When “model laws” are to form the basis of a law for Samoa the greatest care must be taken to ensure that each and every provision is properly applicable to Samoa, and that every aspect of the drafting fully complies with the requirements identified in this Handbook.

Any person who is tasked with drafting a “model law” that is intended to be applied in Samoa must ensure that the format and substance are not inconsistent with the requirements stated in this Handbook. Any non-complying draft is not likely to achieve speedy enactment in Samoa. The Office of the Attorney General reserves the right to return any draft that fails to meet these requirements.



## CHAPTER 7

### ATTORNEY GENERAL'S DIRECTIVES

The Attorney General will issue directives from time to time requiring that certain drafting practices be adopted (or avoided, as the case may be), and to clarify aspects of this Handbook. Consultant drafters should ensure that this copy of the Handbook is current, and that they are in possession of the most current directives. The Office of the Attorney General can advise as to the full list of Directives that are of current application.

The matters referred to in 6.3 – *General requirements for consultant drafters* are to be regarded as directives made by the Attorney General.

Attorney General's Directives contained in this handbook –

Directive No.	Date of Issue	Subject Matter
1.		Policy/Confirmation of need for law reform - <ul style="list-style-type: none"> <li>• Approval should be sought for the relevant policy and for drafting instructions to be issued to the Attorney General's Office.</li> <li>• Confirm who the instructing party is or should be.</li> </ul>
2.		Preparation and Submission of Instructions - <ol style="list-style-type: none"> <li>1. In preparing instructions for the Office of the Attorney General it must be clearly determined at the outset what the policy objectives are for Government. (This should not restrict or deny development of a law where it may be more appropriate to develop policy alongside development of a draft).</li> <li>2. Where a Ministry or Government Corporation has a legal Adviser, involvement throughout preparation of instructions is encouraged.</li> <li>3. Other relevant documents may assist in providing clear instructions such as:                             <ol style="list-style-type: none"> <li>a) all relevant Cabinet papers and papers sent to the Minister on the proposed Bill;</li> <li>b) all relevant precedents, cases, legal opinion and reports;</li> <li>c) notes of any relevant court or other proceedings in contemplation</li> <li>d) official copies of any relevant international agreement or obligations</li> <li>e) a description of consultation with other Ministries and agencies: the names of organisations and individuals within them consulted, and their input</li> <li>f) any other relevant background material.</li> </ol> </li> <li>4. Submission of instructions to the AGO should be co-operative and based on an understanding of what can be expected in return from the AGO.</li> </ol>

3.		<p>Consultant Drafters -</p> <ol style="list-style-type: none"><li>1. Approval of Consultant Drafters: The terms of reference for all Consultant Drafter must be approved by the AGO. Some general requirements include:<ol style="list-style-type: none"><li>a) a degree in law;</li><li>b) relevant legislative drafting experience that is evidenced by a full list of laws which they have drafted; and</li><li>c) where necessary proof of involvement in drafting those laws.</li></ol></li><li>2. Consultant drafters:<ul style="list-style-type: none"><li>• Consultant Drafters must review all domestic laws relevant to the proposed Bill/Regulations or Subordinate legislation, to gauge relevancy and appropriateness of the draft in relation to the existing political/economic and social environment.</li><li>• A Consultant drafter must regularly keep in contact with Parliamentary Counsel concerning development of the draft.</li><li>• A draft Bill provided by a Consultant Drafter must include all relevant Reports, including a Consultation Report indicating who was consulted and how the matters raised during consultations have been reflected in the draft.</li></ul></li><li>3. Post submission process: Consultant Drafters must be willing to render additional assistance if called upon to achieve final enactment of their drafted laws, even if such assistance is called for after the finalisation of their contracted tasks.</li><li>4. Language and context – Must be consistent with the handbook in every respect</li><li>5. Parliamentary Process -<ul style="list-style-type: none"><li>• The Attorney General's Certificate is required for every draft law and must be included in the Cabinet Submission.</li><li>• Cabinet submissions: Parliamentary Counsel are not involved in the preparation of related speech notes or briefing papers. Cabinet submissions are prepared by the Ministry responsible for the Bill and should include:<ol style="list-style-type: none"><li>a) The general policy background of the Bill; and</li><li>b) A summary of the content and objectives of the Bill.</li></ol></li></ul></li></ol>
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## CHAPTER 8

### LEGISLATIVE PROCESS IN SAMOA

#### 8.1 General Outline of Legislative Process in Samoa

The following is a brief summary of the general legislative processes applying in Samoa -

- The formulation and development of policy leading to legislative reform has always been the responsibility of the relevant Ministry, under the direction of the the Ministry's CEO and subject to the ultimate approval of the relevant Minister.
- In 2002 a Law Reform Commission was established by Act of Parliament. The Commission was never constituted and in 2008 the Act was repealed and replaced by a new law establishing a Commission of a substantially different nature. When the new Commission is constituted it shall extend the government's legislative drafting capacity. It shall not have authority to pursue law reform on its own initiative. It shall act at the direction of the Prime Minister, Cabinet or the Attorney General and ensure that major law reform is undertaken with broad stakeholder consultation. In relation to each referral it shall ensure that a draft law is prepared in accordance with the processes and requirements noted in the legislative drafting handbook.
- The responsibility for drafting necessary legislation, or the final vetting and approval of legislative drafts prepared by consultants, is vested with the Attorney General. The Office of Attorney General employs qualified Parliamentary Counsel. The Attorney General must certify a Bill or Regulation as being appropriate in both form and substance prior to it being submitted to Cabinet.
- The sponsoring Ministry prepares a Cabinet Submission, which must include the Attorney General's certificate. Once Cabinet approves a draft Bill it will be then referred to the Legislative Department at the Legislative Assembly. Here it is translated into Samoan and placed on the Parliamentary agenda.
- When a Bill laid in Parliament it is introduced by the Minister responsible for it. Under Parliament's Standing Orders the second reading of a Bill occurs 3 days after the first reading. After the second reading of a Bill, it is referred for consideration by the various Select Committees depending on the area that the Bill deals with. Each committee comprises members of the Legislative Assembly. A committee may invite submissions from all interested Ministries, agencies and individuals and shall consider its provisions in the light of any submissions made to the Committee. The Committee is required to produce a report to the Legislative Assembly of its consideration of the Bill. The report normally lists the persons the Committee consulted and sets out the Committee's recommendations to either amend the Bill, or for the Bill to proceed without amendment. After

the Legislative Assembly adopts the Committee's report the Bill is then considered in detail by the Legislative Assembly before its third and final reading and approval by the Legislative Assembly.

- After the third reading, the Prime Minister then advises the Head of State to assent to the Bill. The Head of State, upon receipt of the Prime Minister's advice, must give assent to an Act before it becomes law. In many cases it comes into force upon assent, but it is possible to delay implementation by requiring notification of commencement to be published in the Government newspaper, the "Savali".
- Copies of recently enacted laws can be purchased from the office of the Clerk of the Legislative Assembly or viewed without any fee on the Parliament's website <http://www.parliament.gov.ws>.

## **8.2 Acts of the Samoan Parliament**

All Acts must be passed by the Legislative Assembly in accordance with the general process noted above, and subject to parliamentary procedure as contained in the Standing Orders of the Legislative Assembly.

Copies of the Standing Orders may be obtained from the Clerk of the Legislative Assembly, or borrowed for a short period from the Office of the Attorney General. However, the limited role of consultant drafters as noted in 8.4 should be generally observed.

## **8.3 Subordinate Legislation**

### **8.3.1 Regulations**

Nearly every Act makes provision for regulations to be made under its authority. It is standard practice for regulations to be made by the Head of State acting on the advice of Cabinet. Any departure from this general rule must be authorised by the Attorney General.

Consultant drafters who are tasked with the drafting of Regulations must ensure that the Regulations fall within the authority given by the Act under which they are to be made. Consultant drafters who are drafting Acts must ensure that the general regulation making power is provided for, and that a full range of specific regulations for all anticipated matters are stated.

### **8.3.2 Orders, Notices, Warrants and Proclamations**

The power for Ministers to make Orders, Notices, Warrants or Proclamations is a relatively rare feature in Samoan Acts, but the power should be provided for in appropriate circumstances.

The following laws provide some precedent for the powers to make Orders, Notices or Warrants –

- Agriculture, Forests and Fisheries Act 1959
- Bankruptcy Act 1908 (NZ)
- Broadcasting Ordinance 1959
- Civil List Act 1964
- Commissions of Inquiry Act 1964
- Customs Act 1977 – Importation Prohibition Notices and Orders
- Decimal Currency Act 1966
- Diplomatic Privileges and Immunities Act 1978
- District Courts Act 1969
- Hotel Levies Act 1972
- Judicature Ordinance 1961
- Labour and Employment Act 1972
- Land and Titles Act 1981
- Land, Survey and Environment Act 1989
- National Provident Fund Act 1972
- Oaths, Affidavits and Declarations Act 1963
- Police Offences Ordinance 1961
- Post Office Act 1972
- Prisons Act 1967
- Samoa Trust Estates Corporation Reconstruction Act 1990
- Shops Ordinance 1961

### **8.3.3 Rules and By-laws**

The inclusion of a power to make rules or by-laws is unusual in Samoan Acts, but is possible and should be considered for appropriate circumstances.

The following laws provide some precedent for arrangements for the making of rules and by-laws –

- Administration Act 1975
- Bankruptcy Act 1908 (NZ)
- Credit Union Ordinance 1960
- District Courts Act 1969
- Divorce and Matrimonial Causes Ordinance 1961
- Electoral Act 1963
- Judicature Ordinance 1961 – Rules of Court
- Judgment Summonses Act 1965
- Fisheries Act 1988 – Village by-laws
- Water Resources Management Act 2008 – Village by-laws
- Samoa Water Authority Act – Utilities by-laws

### **8.4 Role of Consultant Drafters in Matters of Legislative Process**

In most cases a consultant drafter shall not be required to participate in or advise on these legislative processes. In rare cases a consultant may be asked to explain the Bill to the relevant Committee of the Legislative Assembly. This shall be at the direction of the Attorney General, or upon the direct request of the Chairperson of the relevant Committee.

A consultant drafter must bring the following matters to the attention of Parliamentary Counsel or the Attorney General –

- If there are matters of extreme urgency which may justify the immediate referral of the law to Cabinet, suspension of Standing Orders and the urgent enactment of the law.

- If the consultant believes that any motivation for the law reform, or any aspect of a proposed law reform may not be in the national interest of Samoa for any reason.

## **8.5 Translation and language**

### **8.5.1 Samoan and English versions**

Under Article 112 of the Constitution both the Samoan and English versions of the Constitution are said to be equally authoritative. In the case of difference however the English text shall prevail.

Section 4(2) of the *Revision and Publication of Laws Act 2008* provides that –

“(2) The official language of the consolidated and revised Statutes shall be English, but the Attorney General may approve an official version of the Statutes in the Samoan language also.”

As the statutes of Samoa are given their authorised status by their consolidation and certification, and in the absence of an official Samoan version of the consolidated Acts, it can be said that the current consolidated Acts in the English language are the authorised versions of the Acts of the Samoan Parliament. This will change when a consolidated version of the Acts in the Samoan language is approved. At that time the issue of which version shall prevail shall become less certain.

For a full consideration of the situation prior to the commencement of the *Revision and Publication of Laws Act 2008* see the decision of the Supreme Court in *In re the Electoral Act, Pita v Liuga* [2001] WSSC 20 (19 July 2001).

### **8.5.2 Predominant use of the Samoan version**

It must be noted that all laws are translated into the Samoan language and are considered, debated and enacted in the Samoan language. They are published and sold in both the Samoan and English languages, with the Samoan version appearing first in each publication.

The AGO currently plays no role in the translation of Acts and supporting documents. This may change over time depending on the availability and skills of the legislative drafters.

It is the responsibility of the sponsoring Ministry to ensure that Cabinet Submissions are prepared in Samoan. The official translation of draft Bills and Regulations is undertaken by the Office of the Clerk of the Legislative Assembly. Sponsoring Ministries and agencies should be aware that the translation of draft laws into Samoan may create differing views as to their meaning and intent. This should be kept in mind, and such problems should be avoided as far as is possible.

## **CHAPTER 9**

### **FUNDAMENTAL DRAFTING REQUIREMENTS**

#### **9.1 Observance of Fundamental Rights and Principles**

All laws must be consistent with the requirements of the *Constitution of the Independent State of Samoa*. Copies of the Constitution are available for purchase from the Clerk of the Legislative Assembly, or may be borrowed by consultant drafters from the Office of the Attorney General.

The guaranteed basic rights and freedoms in Part II (Fundamental Rights) of the Constitution relate to the following matters –

4. Remedies for enforcement of rights
5. Right to life
6. Right to personal liberty
7. Freedom from inhuman treatment
8. Freedom from forced labour
9. Right to a fair trial
10. Rights concerning criminal law
11. Freedom of religion
12. Rights concerning religious instruction
13. Rights regarding freedom of speech, assembly, association, movement and residence
14. Rights regarding property
15. Freedom from discriminatory legislation

Where any doubt arises as to the constitutionality of any proposed provision of a draft law, this must be brought to the attention of Parliamentary Counsel.

All laws must reflect accepted principles of human rights and be consistent with relevant International Conventions applying in Samoa, including –

- Universal Declaration of Human Rights
- Convention on the Rights of the Child
- Convention on the Elimination of all Forms of Discrimination Against Women
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights.

A comprehensive list of international treaties, conventions and agreements can be requested from MFAT or reviewed in the AGO by consultant drafters.

#### **9.2 Plain English to be used**

It is essential that only plain English be used for the drafting of all laws. The terminology identified in 9.3. must not be used.

The word “notwithstanding” is no longer used when clarifying that a law, or a provision of a law, is to apply even if another law may contain a contrary provision. The word “despite” is now the accepted terminology.

The expression “Without limiting the generality of ...” is permissible in the regulation making provisions [see 12.3]

It is important that intelligible English be used and that laws are not drafted so as to make them difficult to understand and apply. Samoans are not generally uncomfortable with technical language, and Samoan courts are more than capable of interpreting and applying technical provisions of laws.

### **9.3 Avoidance of certain terminology**

#### **9.3.1 Use of “shall” and “may”**

The confusion which the words “shall” and “may” create when used in the legislation must be avoided. This generally arises when the words are not used appropriately.

The word “shall” can be used where the intention is to indicate that a power is to be exercised or a function performed without a discretion being exercised by the decision-maker or responsible authority. It indicates that something simply must be done. The word “must” can be used in its place.

In appropriate cases the word “may” can be used to indicate that a discretion is vested in relation to the exercise of a power or function.

#### **9.3.2 Other words and expressions which may not be used**

The following words and expressions have no place in the laws of Samoa -

- “it is hereby declared that”
- “that is to say”
- thereunder
- thereof
- thereafter
- thereby
- therefrom
- therewith
- thereon
- therein
- therefor
- hereby
- heretofore
- hereafter
- hereinafter
- hereinbefore
- hereof
- herein
- such
- foregoing
- the said...
- aforesaid



#### **9.4 No explanatory provisions are necessary in the text of laws**

The practice and drafting style in some jurisdictions of including explanatory statements in the body of laws is not followed in Samoa. If laws are drafted properly and use appropriate plain English language then the need should not arise.

Some current laws include a statement that a provision exists “for the removal of doubt”. This is no longer accepted practice and should not be followed. There should be no room for doubt if a provision is properly drafted.

#### **9.5 Only gender neutral terms are permissible**

References to the masculine gender only (such as “he”, “him” or “his” used without reference to the female counterpart) no longer have place in the laws of Samoa. When the Acts of the Samoan Parliament were consolidated in 2007 all references to the masculine gender alone were rendered in gender neutral terms by -

- “he” was made “he or she”
- “him” was made “him or her”
- “his” was made “his or her”
- References to offices were repeated (e.g. “The Registrar may if [he] the Registrar thinks fit..”)
- References to individuals were repeated (e.g. “The applicant may if [he] the applicant thinks fit..”)
- Words were deleted and replaced with another appropriate word (e.g. “A member may resign [his] *from* office..”)
- Words were simply removed deleted (e.g. “A member may resign from [his] office...”)

Any of these styles are acceptable and the proper choice must be made for the particular provision. Above all the drafting style should avoid reference to gender whenever this is possible.

#### **9.6 Exposure of government to liability to be avoided**

##### ***9.6.1 General requirement to avoid government liability***

No law should expose government to any liability. It is generally not permissible for any law to impose obligations on government in a way that any failure on the part of government might result in a claim based upon an alleged breach of a statutory duty by any representative of government.

Where any law is located which, by its wording or any deficiency in its provisions, appears to attract liability to government the matter must be brought to the attention of Parliamentary Counsel without delay.

### **9.6.2 Indemnity provisions**

In many cases an indemnity is given to enforcement agencies and their officers, and in some cases the indemnity is given for the protection of government generally from liability.

This must be considered and inserted in all appropriate cases.

Some examples of such provisions are –

**Land Registration Act 1992/1993, section 38 - “Government not liable -** The Government is not liable in any civil proceedings for any damage done or for any loss suffered as result of any act, omission or default of the Registrar or any of the Registrar’s subordinates.”

**Alternative Dispute Resolution Act 2007, section 10 - “Protection of mediators -** A mediator has the same protection and immunity as a judge of the Supreme Court in the exercise in good faith of his or her functions as mediator.”

**The Government Proceedings Act 1974, section 6(3) –** “No proceedings shall lie against the Government by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him or her, or any responsibilities which he or she has in connection with the execution of judicial process.”

**Money Laundering Prevention Act 2007, section 46 - “Immunity-(1)** No civil, criminal or administrative liability, including damages or penalties, shall be imposed against the Government of Samoa, the Minister, the Authority, the Financial Intelligence Unit, the Director or any officer, servant or agent of the Authority or the Financial Intelligence Unit or any person acting pursuant to any authority conferred by the Authority or the Director, as the case may be, in respect of any act or matter done or omitted to be done in good faith in the exercise or purported exercise of their respective functions conferred by or under this Act or any regulations made thereunder.”

## **9.7 Minimising problems of proof**

The greatest care must be taken to remove onerous burdens on government to prove matters such as extensive and unwarranted elements of offences, and matters crucial to establishing the validity of laws.

### **9.7.1 Bringing laws into effect**

In recent years laws were drafted and enacted in Samoa which included publication requirements stated in the commencement provision in the following terms –

“(3) Notice of commencement of this Act shall published in Samoan and English in the Savali and one other newspaper circulating in Samoa.”

This practice is no longer acceptable and must not form part of any law drafted for Samoa. The Government of Samoa now implements a policy which requires notice to be published in this manner, but this requirement (or any similar requirement) must never be stated in the text of any law. The Government is not to be burdened with the requirement of proving publication of such a notice, or the extent of circulation of any newspaper in which a notice has appeared.

### **9.7.2 Avoidance of onerous requirements for public advertisement**

Where any requirements should properly be made for the publication by Government of any notice or fact, then it will be sufficient in all cases for such publication to be done solely in the Savali.

Any departure from the above requirement requires the approval of Parliamentary Counsel and will be justified only if valid grounds exist.

### **9.7.3 Offences and the elements making up offences**

#### *General drafting requirements*

Offences must be drafted to minimise the burden of proving unnecessary elements of an offence.

#### *Some examples of offences*

The following should serve as examples –

An original provision of the draft *Model Marine Pollution Prevention Bill* read as follows –

“ **Hull scraping and cleaning** - (1) The scraping and cleaning of the hulls and other external surfaces of vessels in a manner that may result in the introduction of non-indigenous harmful aquatic organisms or pathogens into Samoan waters is prohibited.”

Proving a breach of this provision would require, inter alia, technically competent evidence that the activity “may result in the introduction” of the regulated organisms etc.

This provision was amended and enacted in the following terms –

“ **Hull scraping and cleaning** - (1) The scraping and cleaning of the hulls and other external surfaces of vessels must be undertaken in a manner that

prevents the introduction of non-indigenous harmful aquatic organisms or pathogens into Samoan waters.

- (2) Any person who scrapes or cleans any hull or other external surface of a vessel in a manner –
- (a) Which permits the introduction of non-indigenous harmful aquatic organisms or pathogens into Samoan waters;
  - (b) Which is inconsistent with any requirements applying to the scraping and cleaning of hulls published by the Ministry or the International Maritimes Organisation from time to time; or
  - (c) Which contravenes a direction given to the person by an authorised officer of the Ministry in relation to the scraping or cleaning of the hull - commits an offence and shall be liable upon conviction to a fine not exceeding 4,500 penalty units or to a term of imprisonment not exceeding 2 years, or both.”

This offence can be proved in a number of ways. Only the first of them requires any burden to prove technical matters by the leading of expert evidence, which may or may not be available in Samoa.

#### **9.7.4 Drafting of laws to alleviate the government’s burden of proof**

##### *Reversing the burden of proof*

Provisions applying reverse burdens will generally not be acceptable but approval for provisions of this nature should be sought from Parliamentary Counsel in appropriate cases.

This may be applied to instances where activities are limited to licensed persons. The burden to prove the right to undertake the activity may be placed on the person, rather than imposing a burden on the prosecution to prove that no such right existed.

##### *Enforcing resource management laws by the issuance of notices etc*

It is now the practice in laws applying to the management of resources in Samoa to provide powers to authorised persons to issue precautionary notices and notices to cease an activity. In this way a precautionary notice can be served where an activity is suspected to have adverse impacts on a particular resource or aspect of the environment.

The precautionary notice may require that the act or activity cease, or not be done, until the government authority is satisfied that the breach or threat to the resource no longer exists.

The precautionary notice may also require all or any of the following –

- (a) That information be provided in relation to the activity, matter or thing to satisfy the Government authority that the environment or resource is not thereby being adversely impacted upon;

- (b) That alternative activities or operating techniques be considered and employed to avoid or decrease the impact upon the environment or the resource;
- (c) That improvements or alterations be made in relation to the activity, matter or thing to the satisfaction of the Government authority, to avoid or decrease the impact upon the environment or the resource; and
- (d) Any other requirement, as determined by the Government authority, to ensure that the activity, matter or thing is not adversely affecting the environment or the resource.

In this manner the breach of any requirement stated in the Notice shall constitute the offence. The government is relieved of the burden of proving that any unlawful act was committed or that any particular impact was the result of the unlawful act.

Examples of these provisions can be found in -

Water Resources Management Bill 2008  
(section 37)

Forestry Management Bill 2007  
(section 25)

## **9.8 Promoting flexibility**

The hallmark of a well drafted law is its anticipation of the full range of likely events arising at any time, and the latitude that is given to government to effectively respond to them. In many cases laws must be drafted so as to provide the greatest degree of flexibility for government to regulate and respond effectively.

Careful consideration must also be given to avoiding the need for future legislative intervention by government where this can be addressed by more flexible arrangements. The following matters are examples of this.

### **9.8.1 Settings fees and charges**

The former practice of setting fees and charges in the Acts themselves or by regulation made under the Act should be avoided. Fees and charges set in this manner become out of date and the need for subsequent legislative reform to update them can be easily overlooked.

It is preferable for provision to be made for fees and charges to be set by the responsible government authority from time to time.

Some examples of such arrangements are –

- Medical Practitioners Act 2007, section 23 – “Fees -** The [Medical] Council may from time to time determine -
- (a) the types of fees to be paid under this Act; and
  - (b) the amounts of such fees...”

**Water Resources Management Act, section 43 – “Fees** – The Minister may by Order set fees for any purpose associated with this Act including –

- (a) application fees;
- (b) licence fees;
- (c) abstraction fees based on the duration of the licence or the quantity of water taken (or both); and
- (d) special fees and levies to address salinity and other adverse environmental effects, or to discourage or penalise water wastage.”

### **9.8.2 Requirement to use Forms**

It is no longer permissible to provide for the use of “prescribed forms” where this necessitates the use of forms prescribed by regulations. The relevant government authority should be empowered to authorise necessary forms, and it may be stated that these are the forms made available from time to time by that government authority.

An example of such a provision is -

**Land Transport Authority 2007, section 29 – “Power to approve forms-(1)**  
The Authority, with the approval of the Minister, may approve forms, certificates, permits, labels, plates or marks which may be issued under this Act.”

## **9.9 Imposing fines and penalties**

There is no set formula for fixing the amount of fines or for determining the length of terms of imprisonment. These must be assessed on a case by case basis having regard to the nature and seriousness of the offence, and its relativity to other existing offences.

Terms of imprisonment are not necessarily set by reference to the amount of the fines fixed for the offence. Some offences are best enforced by a fine, with the option of a minimal term of imprisonment for repeat offenders. Other offences may require the consideration of a lengthy term of imprisonment even for first offenders.

The views of the Office of the Attorney General should be sought and stakeholders should be invited to consider the nature and extent of any prescribed penalty.

### **9.9.1 The form for prescribing offences**

The standard form for the prescription of offences is as follows –

“Any person who xxx [here state the acts which constitute the offence, and where there are more than one they can be divided into paragraphs] commits an offence and shall be liable upon conviction to a fine not exceeding xx

penalty units, or to a term of imprisonment not exceeding xx days/months/years, or both”

Reference to other laws should be had to determine the most appropriate format.

### **9.9.2 The penalty unit concept**

All fines are expressed in penalty units. This is required by the *Fines (Review and Amendment) Act 1998*. At present 1 penalty unit = SAT\$100. It is generally not permissible to fix fines at less than 1 penalty unit.

Only laws applying to the international finance and off-shore banking sector may impose fines in US dollars. Where this is done an appropriate definition must be inserted into the definition section of such a law.

### **9.9.3 Continuing offences**

Provision can be made in appropriate cases for additional fines to apply for every day that an offence continues.

Section 3 of the *Fines (Review and Amendment) Act 1998* refers to the penalty for continuing offence to be one-half of the substantive fine for the offence. This may be applied as a general rule but it can be departed from with the approval of Parliamentary Counsel in appropriate cases.

An example of such a provision appears in **9.9.5**.

### **9.9.4 Combining offences in one section or regulation**

In most cases an offence shall be stated in the section of a law which prescribes the offence.

It is permissible for one section or regulation to make provision for all or many offences against the Act or regulations. This will usually be done under the heading of “Offences against this Part/Act/Regulations”. Such a provision should divide offences up in a ranking of their seriousness as indicated by the applicable penalties.

An example of this can be found in –

**Money Laundering Prevention Act 2007, section 33 – “Offences under Part V-(1)** Any financial institution or any person who contravenes sections 23, 24 or 28 commits an offence and shall be liable upon conviction to a fine not exceeding 500 penalty units or imprisonment for a term not exceeding five years, or both.”

### **9.9.5 General offences provisions**

Often a law will include a general “catch – all” provision to make any breach of the law an offence, where the offence is not otherwise specifically prescribed in a section of the law. This is acceptable for both Acts and Regulations, and can be phrased in the following terms –

**Marine Pollution Prevention Act 2008, section 62 – “General offences and penalties** - (1) A person who breaches any requirement, duty or obligation provided for in this Act, or any regulation made under this Act, for which no offence is stated or no penalty is provided for, commits an offence and shall be liable upon conviction to a fine not exceeding 300 penalty units.

(2) Where any offence against this Act continues for a period after the initial breach and no other penalty is provided elsewhere for the continuance of the offence, a person who commits that offence shall, in addition to any other liability, be liable upon conviction to a fine not exceeding 300 penalty units for every day during which the offence continues.”

***Marine Pollution Prevention Act 2008***



## CHAPTER 10

### FORMAT, FONT AND OTHER STYLE REQUIREMENTS

#### 10.1 Only approved formatting and style requirements to be used

All draft laws must strictly conform to the formatting and style requirements set from time to time by the Clerk of the Legislative Assembly. All draft laws must be approved by the Office of the Attorney General, and such approval shall be withheld if the following requirements are departed from –

<i>Font style for all laws -</i>	Times New Roman for all provisions
<i>Font size for all laws -</i>	12 for all text and headings. 10 for the <i>Arrangement of Provisions</i>
<i>Paper size -</i>	A4
<i>Margins -</i>	To conform with the approved template for draft laws which may be obtained from the AGO
<i>Bold type -</i>	Is to be used for headings in the body of the law and the <i>Arrangement of Provisions</i>  Is to be used for all section numbers and headings in the body of the law  Is to be used in the introductory provisions as shown in the example at the end of this Chapter.
<i>Indents -</i>	Indents for sections, subsections and paragraphs must conform to the example shown at the end of this Chapter.

The formatting and style of draft laws must not be NOT be regarded as mere formalities when laws are drafted.

Guidance must be taken from the example appearing at the end of this Chapter.

#### 10.2 Dividing laws into Parts, Divisions etc

It is usual practice for all laws to be divided into Parts. Common Parts are –

- Part I – **Preliminary** (including short title, commencement, Act to bind the government and other preliminary matters)
- The final Part – **Miscellaneous** (including the regulation making power, amendments, savings provisions, transitional arrangements, repeals)

Parts are numbered using roman numerals in upper case and in bold print (i.e. **PART I, PART II, PART III, PART IV, PART V** etc.)

Parts must be given a short and relevant heading which assists in creating an orderly and clearly defined structure of provisions.

The term Chapter is not appropriate. And headings stated as words only, and without any classification or numbering, are not to be used.

Parts may be further divided into Divisions. Some laws where this is the appropriate format include –

*International Companies Act 1987*  
*Income Tax Administration Act 1974*

It is unlikely that laws need to be divided any further, but if good grounds are thought to exist for including Sub-divisions then this should be brought to the attention of Parliamentary Counsel at an early stage.

The Parts and Divisions must be indicated in the *Arrangement of Provisions*, and care must be taken to ensure that the titles and numbers appearing in the *Arrangement of Provisions* and in the text of the law are identical.

### **10.3 Schedules**

The use of Schedules is appropriate for both Acts and Regulations. These must appear at the end of the law, and more than one Schedule may be used if needed.

Schedules may be used for –

- Tables of fees or charges [but note 9.8.1]
- Tables of provisions that are best presented in the form of lists
- Consequential amendments to laws [see 12.5]
- List of laws to be repealed
- The adoption of rules or the text of international conventions etc

Some laws in which appropriate use of Schedules is made include –

*Accident Compensation Act 1989*  
*Administration Act 1975*  
*Airport Authority Act 1984*  
*Alienation of Customary Land Act 1965*  
*Customs Act 1977*

*Diplomatic Privileges and Immunities Act 1978*  
*Financial Institutions Act 1996*  
*Judicature Ordinance 1961*

If a Schedule is included in a draft law then this must be indicated in the *Arrangement of Provisions* by noting with the word “Schedule” or “Schedules” underneath the last section. The title of the Schedule should not appear in the *Arrangement of Provisions*.

Tables must not be inserted in the text of any law.

## CHAPTER 11

### TERMINOLOGY, OFFICES, OFFICE HOLDERS ETC

#### 11.1 Appropriate terminology to be used

The greatest care must be taken to ensure that the terminology used in draft laws is the accepted terminology applying in and of relevance to Samoa.

It must not be assumed that terminology is common to all countries of the Pacific, and especially if it derives from the most developed countries of the region.

#### 11.2 References to Government offices, officers etc

The proper references to a range of offices, officers and other institutional bodies are identified below.

##### 11.2.1 Government Ministries, agencies etc

###### *The Head of State*

References to the Head of State in Acts should simply use the title “Head of State”.

[Article 16 of the Constitution refers to the Office by its Samoan title of “O le Ao o le Malo”].

In the signature provision for the promulgation of regulations the name of the current Head of State should be stated as –

**I, TUI ATUA TUPUA TAMASESE EFI**, Head of State...

###### *Government Ministries*

The lawful titles of the Government Ministries are as follows (but it should be noted that some Ministries are popularly referred to by other names) -

1. Ministry of the Prime Minister
2. Ministry of Finance
3. Ministry of Agriculture
4. Ministry of Commerce, Industry and Labour
5. Ministry of Communications and Information Technology
6. Ministry of Education, Sports and Culture
7. Ministry of Foreign Affairs and Trade
8. Ministry of Health
9. Ministry of Justice and Courts Administration
10. Ministry of Natural Resources and Environment
11. Ministry of Police, Prison and Fire Service
12. Ministry for Revenue
13. Ministry of Works, Transport and Infrastructure

14. Ministry of Women, Community and Social Development  
(Taken from the Ministerial and Departmental Arrangements Act 2003)

*The Court Hierarchy (and judicial officers)*

The court hierarchy of Samoa is comprised of –

- The Court of Appeal (President and Judges of the Court of Appeal)
- The Supreme Court of Samoa (Chief Justice and Judges of the Supreme Court)
- The District Court (District Court Judges and Fa'amasino Fesoasoani)

*Other government bodies*

- Airport Authority (see Airport Authority Act 1984)
- Agriculture Store (see Agriculture Store Corporation Act 1975)
- Betting Totalisator Agency (see Betting (Totalisator Agency) Act 1990)
- Central Bank of Samoa (see Central Bank of Samoa Act 1984)
- Electric Power Corporation (see Electric Power Corporation Act 1980)
- Land Transport Authority (see Land Transport Authority Act 2007)
- National Health Service (see National Health Service Act 2006)
- National Kidney Foundation (see National Kidney Foundation of Samoa Act 2005)
- National Provident Fund (see National Provident Fund Act 1972)
- National University of Samoa (see National University of Samoa Act 2006 )
- Samoa Land Corporation (a government owned company)
- Samoa Law Reform Commission (see Samoa Law Reform Commission Act 2008)
- Samoa Life Assurance Company (see Life Assurance Corporation Act 1976)\*
- Samoa Ports Authority (see Ports Authority Act 1998)
- Samoa Trust Estates Corporation (see Samoa Trust Estates Corporation Act 1977)\*
- Samoa Water Authority (see Samoa Water Authority Act 2003)

\* Note: In their original form these laws had “Western Samoa” in their titles.

**11.2.2 Public office-holders**

*Chief Executive Officers of Ministries*

- Chief Executive Officer, Ministry of the Prime Minister
- Chief Executive Officer, Ministry of Finance
- Chief Executive Officer, Ministry of Agriculture
- Chief Executive Officer, Ministry of Commerce, Industry and Labour
- Chief Executive Officer, Ministry of Communications and Information Technology
- Chief Executive Officer, Ministry of Education, Sports and Culture
- Chief Executive Officer, Ministry of Foreign Affairs and Trade
- Chief Executive Officer, Ministry of Health
- Chief Executive Officer, Ministry of Justice and Courts Administration
- Chief Executive Officer, Ministry of Natural Resources and Environment
- Chief Executive Officer, Ministry of Police, Prison and Fire Service
- Chief Executive Officer, Ministry for Revenue
- Chief Executive Officer, Ministry of Works, Transport and Infrastructure
- Chief Executive Officer, Ministry of Women, Community and Social Development  
(Taken from the Ministerial and Departmental Arrangements Act 2003)

### *The Offices and Office-holders provided for in the Constitution*

- Head of State (Part III)
- Council of Deputies (members) (Article 25)
- Prime Minister (Article 32(2))
- Deputy Prime Minister (Article 32(2)(ba))
- Attorney-General (Article 41)
- Speaker of the Legislative Assembly (Article 49)
- Deputy Speaker of the Legislative Assembly (Article 50)
- Clerk of the Legislative Assembly (Article 51)
- Chief Justice (Article 65)
- Judge of the Supreme Court (Article 65)
- Judge of the Court of Appeal (Article 75)
- Chairman and members of the Public Service Commission (Article 84)
- Controller and Chief Auditor (Article 97)
- Electoral Commissioner (Second Schedule)

Article 72 also creates a Judicial Services Commission. Its President is the Chief Justice. The Attorney-General (or in his absence the Chairman of the Public Service Commission) and one other person are members.

Note: During the 2007 consolidation of laws the references in the Constitution to male genders alone were retained. No changes were made because of the constitutional requirements to make amendments to the Constitution. In all other laws references were made gender neutral under the authority of the *Revision and Publication of Law Act 2007*.

### *Other Public Office-Holders*

- Commissioner of the Police Service (Police Service Act)
- Commissioner of Prisons (Prisons Act 1967) (*Note: This position is currently held by the Commissioner of Police*)
- *Komesina o Sulufaiga* (Ombudsman) (Komesina o Sulufaiga Act 1988)
- Executive Director of the Samoan Law Reform Commission (Samoa Law Reform Commission Act 2008)
- The Public Trustee
- The Secretary, Public Service Commission  
(*Taken from the Ministerial and Departmental Arrangements Act 2003*)

## **11.3 References to other laws**

References in laws to other laws must state the correct short title of the Act or the correct title of the Regulations referred to, and should include the year of enactment or promulgation.

It is usual to use *italics* for such titles.

## CHAPTER 12

### REQUIREMENTS FOR DRAFTING ACTS

#### 12.1 The Heading and Other Introductory Formalities

The formatting requirements for the heading and other introductory matters for draft Bills must be observed. These are explained below and an example appears at the end of this Chapter. Many draft Bills are submitted to the Office of the Attorney General in a form which does not meet the requirements stated in this Handbook and which do not contribute to the advancement of legislative reform in Samoa. These deficiencies are often evidenced in the introductory provisions of the draft.

##### 12.1.1 The Title

An appropriate title should be chosen for the Act. This should be self-explanatory and phrased so as to permit easy identification in an alphabetical list of laws.

For example, for many years the law in Samoa which dealt with broadcasting was titled the *Samoa Broadcasting Act*. This title did not assist anybody who was searching for broadcasting as a legislative theme in an alphabetical listing of Acts. It should have been simply titled as the Broadcasting Act. In recent years the *Samoa Water Authority Act* was passed. Its title was inappropriate for the same reasons.

Reference should be had to the “Red Book” (which is available from the Clerk of the Legislative Assembly and lists all Acts, Ordinances and Regulations of Samoa) to ascertain existing titles of Acts and as a guide to the naming of new laws.

##### 12.1.2 The Arrangement of Provisions

The *Arrangement of Provisions* must be fully and correctly inserted at the heading of each draft Bill. This should appear under the official logo of the Government of the Independent State of Samoa. This is available in electronic form from the Office of the Attorney General.

The greatest care must be taken to ensure that the wording of the sections and headings in the *Arrangement of Provisions* is identical to the section titles and heading titles (of Parts and Divisions) in the text of the draft Bill.

##### 12.1.3 The Long Title of the Act

An appropriate long title for each draft Bill must be formulated and inserted into the heading of the draft in its appropriate place. Some examples of long titles are stated below, and reference should be had to other precedents if necessary. The long title must accurately reflect the nature and purpose of the law, but this should be done as concisely as the nature of the law permits.

*Some examples –*

AN ACT to provide for the repeal of the Police Service Act 1977 and for its replacement by a modern and comprehensive law applying to all aspects of the structure, functions and administration of the Samoa Police Service, and for related purposes.

AN ACT to provide for the prevention of pollution to the marine environment and for responses to marine pollution incidents emanating from vessels, and other matters related to the implementation of international marine pollution conventions.

AN ACT to make provision for the effective and sustainable management of Samoa's forestry resources, and for related purposes.

AN ACT to establish the Samoa Law Reform Commission for the review and development of the laws of Samoa.

AN ACT to amend the International Companies Act 1987.

#### **12.1.4 Formal Statement of Enactment**

The formal statement of enactment of every Act must be included in its appropriate place, and in the following form -

“ **BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows: ”

## **12.2 Preliminary Matters**

It is usual practice for the short title, commencement provision and statement that the law binds the government to be included as sections in Part I of each Act under the heading of “PRELIMINARY”.

### **12.2.1 Short title**

An appropriate short title must be included, and this must be identical to the heading and title given to each law as provided by 12.1.1.

The short title must be succinct and relevant, and must avoid confusion with all other current and anticipated laws.

It is permissible to use brackets within the short title if this helps to clarify the nature of the law. Some examples are –

- International Companies (Secrecy Provisions) Amendment Act 2008

- South Pacific Games (Taxation Incentives) Act 2007
- Excise Tax (Domestic Administration) Act 1984
- Excise Tax (Import Administration) Act 1984
- Fisheries (Ban of Driftnet Fishing) Act 1999

### **12.2.2 Commencement**

It should be noted that –

- (a) Section 8 of the *Acts Interpretation Act 1974* states that –

“Every Act assented to by the Head of State that does not prescribe the time from which it is to take effect shall come into operation on the day on which it is assented to.”

- (b) Section 8 of the *Regulations Ordinance 1953* states that -

“All regulations made after the coming into force of this section, which do not expressly state therein the date on which they are to come into force, shall come into force on the date on which they are made.”

- (c) Section 10 of the *Acts Interpretation Act 1974* states that -

“(1) Where in an Act it is expressly provided that the same shall come into operation on a particular day, then the same shall be deemed to come into operation immediately on the expiration of the previous day.

(2) When any Act or any provision of an Act is expressed to take effect "from" a certain day, it shall, unless a contrary intention appears, take effect immediately on the commencement of the next succeeding day.

- (d) Section 11 of the *Acts Interpretation Act 1974* states that -

“Where an Act that is not to come into operation immediately on the passing thereof confers power to make any appointment, to make or issue any instrument (that is to say, any proclamation, order, warrant, scheme, rules, regulations, or bylaws), to give notices, to prescribe forms, or do anything for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction: that any instrument made under the power shall not, unless the contrary intention appears in the Act or the contrary is necessary for bringing the Act into operation, itself come into operation until the Act comes into operation.

- (e) Under section 12 of the *Acts Interpretation Act 1974* the gazetting of Acts is not necessary.



Very careful consideration must be given to the most appropriate means for bringing a new law into force after its enactment. In most cases this should be stated in section 1(2) of the law in the following terms –

“(2) This Act commences on the date of assent by the Head of State.”

In some cases however there may be grounds for deferring the implementation of an Act until –

- A nominated date (but good reasons for this must exist); or
- The commencement of a related law (but this should be avoided); or
- Notice of commencement of the law is published in the Savali by the responsible Minister.

No provision should be inserted which requires the publication of a notice of commencement in any other form than as a notice published in the Savali (but in practice such notices shall be advertised in newspapers and by other means as determined by the responsible Ministry).

If it is preferable for certain Parts of a law to be brought into effect at different times then an appropriate provision to this specific effect must be added to section 1 of the draft law.

### **12.2.3 Definitions**

In nearly every draft law definition provisions shall appear in section 2. This usually appears in the following form –

**2. Interpretation – (1)** In this Act, unless the context otherwise requires:  
“xx” means ....

There is no need to give a definition to “the Act” if the reference is to the Act itself.

Only necessary definitions should be inserted, and the list of definitions should be kept as small as is possible. Care must be taken to ensure that only words that are used in a draft Bill are included in the interpretation provisions.

Definitions must be stated concisely and must assist in the understanding and application of the Act.

It is permissible for a provision to be inserted to generally adopt definitions of a technical nature which appear in a related law or a relevant convention or other such document.

A definition which is not meant to be finally definitive of all possible meanings should use the word “includes” rather than “means”.

Words of particular significance for specific Parts or Divisions may be defined specifically for the purposes that Part or Division, preferably at the beginning of it.

### **12.2.4 Act to bind the Government**

It is a general principle of statute law that an Act is not intended to bind the State unless it is specifically stated that it does have general application to government. This principle is applicable in Samoa and is supported by section 5(2)(j) of the *Acts Interpretation Act 1974* which states –

“(j) No provisions or enactment in any Act shall in any manner affect the rights of the Government of Samoa, unless it is expressly stated therein that the Government shall be bound thereby;”

It is common practice for a section to be inserted into Part I (Preliminary) in the following simple terms –

“ **x. Act to bind the Government** – This Act shall bind the Government.”

There shall be rare cases where it is inappropriate for the law to apply to government, or preferable that it does not do so. In such cases the above section can be omitted but this should be confirmed at an early stage by Parliamentary Counsel.

## **12.3 The power to make regulations**

### **12.3.1 The general regulation making power**

Nearly every law shall make provision for the making of regulations under its authority. It is the standard practice in Samoa for regulations to be made by the Head of State, acting on the advice of Cabinet, and the usual section in the last Part of the Act (often under the heading of “MISCELLANEOUS”) is most often phrased in the following way –

“ **xx. Regulations** – (1) The Head of State, acting on the advice of Cabinet, may from time to time make such regulations as are necessary or expedient for the implementation of this Act.”

### **12.3.2 Power to make specific regulations**

It is usual practice for laws to include powers to make specific regulations. This provision usually appears as a subsection after the general regulation making power noted above. It is often expressed in the following terms (as an example) –

“(2) Without limiting the generality of subsection (1), regulations made under this Act may make provision for –  
(a) the qualifications for employment in the Service;  
(b) the welfare of members of the Service;

- (c) the employment of the members of the Service, including provisions relating to pay, allowances, promotion, leave, discipline and control of the Service;”  
etc. etc.

It is permissible for sections of Acts to give power to make regulations, and for more than one section of an Act to give this power.

These would normally be expressed in the following form (as an example) –

“ **50. Regulations-**(1) The Head of State may from time to time on the advice of Cabinet make Regulations as are necessary or expedient for giving full effect to this Part, and for its due administration.

(2) Without limiting the generality of subsection (1), regulations may provide for -

- (a) The registration of vessels;  
(b) The ascertainment of the tonnage of vessels and the issue and use of Tonnage Certificates;” ... etc

The *Shipping Act 1998* contains many provisions of this nature.

### **12.3.3 Other authority to make regulations**

Authority to depart from the usual provisions noted above must be sought from Parliamentary Counsel at an early opportunity. This may involve the vesting of powers to make regulation in Ministers or government agencies, but approval for this is not likely.

### **12.3.4 Emergency regulations**

Provision in appropriate cases may also be made for the making of emergency regulations. These could provide a streamlined procedure for the making of regulations where delay could pose a threat to national security or a danger to health and safety. In this way the Minister may be empowered to make regulations on an emergency basis. Any such regulations would need to be referred to Cabinet for its endorsement as soon as is possible.

## **12.4 Repeal of other laws**

Any intention to draft a law which repeals another law should be brought to the attention of Parliamentary Counsel at an early stage.

### *General form*

Care should be taken to ensure that new laws properly repeal the whole or relevant parts of outdated laws or laws which they are intended to replace.

The provision to repeal other laws (or sections or Parts of them) usually appears in the last Part of an Act under the heading of “MISCELLANEOUS”, and guidance should be taken from the following form –

“ **17. Repeal** – The Samoa Law Reform Commission Act 2002 is repealed.”

#### *Combining repeal and amendments*

It may be permissible for one section to make provision for the repeal of one or more laws, and for the amendment of others.

If this is proposed it can be done in the following form -

“ **48. Repeals and consequential amendments** – (1) The Water Act 1965 is repealed.

(2) Section 35 of the Lands, Survey and Environment Act 1989 is amended by deleting the words “water rights” where ever they appear.

(3) The Watershed Protection and Management Regulations 1992 are repealed.”

#### *Repeal to be noted in the long title*

The long title to any law which repeals another law should generally note this fact. An example of this is -

AN ACT to provide for the repeal of the Police Service Act 1977 and for its replacement by a modern and comprehensive law applying to all aspects of the structure, functions and administration of the Samoa Police Service, and for related purposes.

#### *Acts repealing regulations*

In some cases it may be necessary or convenient for an Act to repeal Regulations. Approval for this must be sought from Parliamentary Counsel at an early stage.

The example cited above is an illustration of this. The Road Transport Reform Act 2008 is another example, with a validating provision.

## **12.5 Amendments to other laws**

Many laws contain provisions to amend other laws by deletion or change of wording. In some cases the entire purpose of a law is to make amendments to an Act. In other cases there may be a need to amend one or more provisions of one or more other Acts.

The greatest care must be taken when drafting amending provisions to make sure that the reference to the section, subsection and paragraph intended to be amended is accurate.

### *General form of amendments*

Great care must be taken when formulating the wording of amending provisions. Examples of how these can be best phrased are included at the end of this Chapter.

### *Need for validation and savings provisions*

Consideration must be given to the need to recognise certain actions taken under the authority of laws which are to be amended by a new law. In some cases these previous authorisations etc should be saved and be deemed to have been made under the authority of the new law.

### *Acts amending regulations*

In very rare cases it may be necessary or convenient for an Act to amend the provisions of Regulations. Approval for this must be sought from Parliamentary Counsel at an early stage.

### *Amendments to be noted in the long title*

The long title to any law which is primarily intended to amend another law should generally note this fact. An example of this is -

AN ACT to amend the International Companies Act 1987.

## **12.6 Multiple consequential amendments**

### *Single or separate amending sections*

It is permissible to make a range of consequential amendments to more than one law in the text of a new Act. It is not necessary in such cases to prepare individual amending laws for each of the laws that are to be subject to consequential amendments.

The relevant section will usually be given the title of “Consequential amendments to other laws”, or alternatively a separate section can be inserted to amend each separate law.

Examples of both these approaches are as follows –

### *Consequential amendments in one section –*

The ***Remuneration Tribunal Act 2003, section 21*** – “**Consequential amendments**-(1) Section 7 of the Komesina o Sulufaiga (Ombudsman) Act 1988 is repealed and replaced with the following provision:

“7. Salary, allowances and other benefits of Komesina o Sulufaiga (Ombudsman)-(1) The salary, allowances and other benefits of the

Komesina o Sulufaiga (Ombudsman) shall be determined under the Remuneration Tribunal Act 2003.

(2) The salary, allowances and other benefits referred to in subsection (1) shall be paid as statutory expenditure out of the Treasury Fund, without further appropriation than this section.”

(2) Section 7 of the Parliamentary Under-Secretaries Act 1988 is repealed and replaced with the following provision:

“7. Salaries, allowances and other benefits - The salaries, allowances and other benefits for each Parliamentary Under-Secretary shall be determined under the Remuneration Tribunal Act 2003.”

(3) Section 7 of the Public Service (Special Posts) Act 1979 is repealed and replaced with the following provision:

“7. Salaries, allowances and other benefits for special posts – The salaries, allowances and other benefits of special posts shall be determined under the Remuneration Tribunal Act 2003.”

And the -

**Public Service Act 2004, section 75 – “Consequential amendments-(1)**  
The Ministerial and Departmental Arrangements Act 2003 is amended as provided for in Schedule 1.

(2) The Remuneration Tribunal Act 2003 is amended as provided for in Schedule 2.”

Section 106 of the PUMA Act 2004 is another example of such multiple amendments being made.

*Separate section for each Act amended –*

The *Miscellaneous Fees Amendment Act 1998* made amendments in separate sections to each of the following Acts –

- Credit Union Ordinance 1960
- Incorporated Societies Ordinance 1952
- Industrial Designs Act 1972
- Land and Titles Act 1981
- Patents Act 1972
- Trademarks Act 1972
- Companies Act 1955
- Business Licences Ordinance 1960
- Road Traffic Ordinance 1960
- Arms Ordinance 1960
- Gaming Act 1978
- Police Offences Ordinance 1961
- Customs Act 1977
- Lands and Titles Investigation Act 1966

*Use of Schedules*

It is also permissible to list the amendments to other laws in an appropriately drafted Schedule. *The Public Finance Management Act 2001* (section 131, sixth and seventh Schedules) and the *Quarantine (Biosecurity) Act 1995* (section 70, second Schedule) are examples of this.

Another example is the **Immigration Act 2004, section 57 – “Repeal and Consequential amendments** – (1) The Acts, Regulations and other Acts of Authority in Schedule II are repealed or amended in accordance with the provisions of the Schedule.

(2) Any reference to any provision or matter under or concerning the Immigration Act 1966 in any enactment, other than the enactments referred to in Schedule II, shall be taken for all purposes as a reference to the corresponding provision or matter in this Act, unless the Minister by Notice determines otherwise.”

## **12.7 Savings provisions and Transitional arrangements**

When a new law is proposed to replace an existing law which makes provision for a regulatory system or regime, careful consideration must be given to the need for savings provisions, and provisions which make arrangements for the transition from one law or legal regime to a new one.

The exact nature of the former system, and its component elements and procedures, needs to be determined and appropriate provision must be made for previous regulatory acts or processes to be saved, where appropriate.

In some cases it is preferable to deem existing regulations to be made under the proposed new law. Other provisions may enable a phased implementation of the new processes in the place of the previous arrangements.

Laws which make detailed provision in this regards include –

*Shipping Act 1998*

*Civil Aviation Act 1998*

The following are examples of provisions which deal with a range of matters which may arise in this context –

### *Savings provisions*

**141. Saving of Licences, inquiries, etc.**-(1) All aviation documents issued under the Civil Aviation Act 1963, and being current at the time of this Act coming into force, shall be of full effect as if issued under this Act and shall remain in force as if commencing on the date that the Civil Aviation Act 1963 is repealed and this Act comes into force.

(2) Notwithstanding subsection (1) the Minister may determine that any aviation document issued under the Civil Aviation Act 1963 shall expire on the date on which it was originally intended to terminate.

(3) Any requirement made, or condition imposed upon the holder of, or applicant for, an aviation document under the Civil Aviation Act 1963 shall have full effect as if made, imposed or required under this Act.

(4) Any enforcement proceeding, prosecution or inquiry taken under the Civil Aviation Act 1963 and as yet undetermined at the time of the coming into force of this Act shall remain in force and shall be maintainable under

the Civil Aviation Act 1963 notwithstanding that the Act may be repealed during the course of such proceeding, prosecution or inquiry.

(5) The Minister may determine that any enforcement, proceeding, prosecution or inquiry referred to in sub-section 4 hereof shall be deemed to proceed under the corresponding or similar provision under this Act and thereafter it shall proceed as if taken under the provision of this Act.

**Civil Aviation Act 1998**

And -

**52. Savings**—(1) The appointment of the General Manager under the repealed Act and current as at the commencement of this Act shall continue on the same terms and conditions as if it was made under this Act and the person holding the appointment as General Manager under the repealed Act and current at the commencement of this Act shall be treated for all purposes as the Managing Director of the Authority.

(2) The staff of the Authority appointed under the repealed Act and employed by the Authority as at the commencement of this Act shall remain as the staff of the Authority on their existing terms and conditions, unless varied under the provisions of this Act.

(3) All contracts and legal proceedings to which the Authority is a party as at the commencement of this Act shall continue as if made or taken in accordance with this Act.

(4) All rights, entitlements, obligations and liabilities, whatsoever and howsoever described, to which the Authority is a party as at the commencement of this Act shall continue unless and until the Authority resolves otherwise according to law.

(5) All approvals and permits given by the Authority under the repealed Act are saved.

(6) All debts and monies owed to the Authority and unpaid as at the commencement of this Act shall remain payable to the Authority and may be recovered by the Authority under the provisions of this Act.

**Samoa Water Authority Act 2003**

And –

**30. Transitional and savings provisions**—(1) The registration of all pharmacists under the Pharmacy Act 1976 shall continue to have full force and effect as if the registration was made under this Act.

(2) All practising certificates issued under the Pharmacy Act 1976 shall continue to have full force and effect until the 31 December next following the commencement of this Act.

(3) All determinations of the Pharmaceutical Committee made under the Pharmacy Act 1976, and all disciplinary proceedings and criminal proceedings being undertaken by or on behalf of the Pharmaceutical Committee or arising out of or under the Pharmacy Act 1976 as at the commencement of this Act shall be deemed to have been made and taken under this Act.



(4) Any reference in law (other than this Act) to the Pharmacy Act 1976 shall be taken as a reference to this Act except where the context otherwise requires.

**Pharmacy Act 2007**

*Transitional Arrangements*

Appropriate provision must be made in a draft law to ensure that there is a smooth transition from the arrangements under a repealed law to those applying under the new law. Careful attention must be given to all aspects of the relevant administrative and regulatory arrangements. As noted above this may require provision relating to –

- The continuation of licences etc approved under the repealed law.
- The review and amendment of licences etc approved under the repealed law to bring them into line with the requirements of the new law.
- The continuation of regulations etc made under the repealed law until they are repealed by regulations made under the new law.
- The continuation of officers and employees appointed and empowered under the repealed law.
- Any other necessary provision to ensure a smooth transition to the new law.

**CHAPTER 12**  
**EXAMPLE OF HEADING AND OTHER INTRODUCTORY MATTERS**  
*Taken from Foreign Investment Act 1998*

**FOREIGN INVESTMENT**



**SAMOA**

Arrangement of Provisions

- |    |  |     |                                |
|----|--|-----|--------------------------------|
| 1. | Short title and commencement   | 10. | Register of Foreign Investment |
| 2. | Interpretation   | 11. | Reports by Foreign Investors   |
| 3. | Reserved List  | 12. | Cancellation of certificates   |
| 4. | Restricted List  | 13. | Rights of Appeal               |
| 5. | Activities not otherwise restricted                                      | 14. | Offences and Penalties         |
| 6. | Foreign Investment Registration  | 15. | Investment Guarantees          |
| 7. | Functions of the Chief Executive Officer                                 | 16. | Settlements of Disputes        |
| 8. | Receipt and Approval of Applications for Foreign Investment Registration | 17. | Transitional Arrangements      |
| 9. | Duration of certificates   | 18. | Regulations                    |
|    |  |     | Schedule                       |

**A BILL**

**FOR AN ACT**

**INTITULED**

**AN ACT to promote foreign investment and to regulate such investment by guaranteeing the rights of citizens to participate in the economy of Samoa.**

**BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:-

**1. Short title and commencement** - (1) This Act may be cited as the Foreign Investment Act 2000.

(2) This Act shall come into force on the date that it is assented to by the Head of State.

**2. Interpretation** - (1) In this Act, unless the contrary intention appears:

## CHAPTER 12 EXAMPLES OF AMENDING PROVISIONS

### *Taken from the Road Traffic Amendment Act 2008*

**2. Definition of the “Board”** – Section 2 of the Principal Act is amended by deleting the definition of “Board” and replacing it with the following –

““Board” means the Land Transport Authority established under the *Land Transport Authority Act 2007*.”

**3. Definition of “prescribed fee”** – Section 2 of the Principal Act is amended by inserting the following definition in the correct alphabetical order –

““Prescribed fee” means the appropriate fee prescribed by regulations made under the Land Transport Authority Act 2007.”

**4. Amendments to references to fees** – The Principal Act is amended by –

- (a) Deleting the words “fee set out in the First Schedule to this Ordinance” from sections 12(2), 28(1), 29(1), 32(2), 35(5), and replacing them with the words -  
“prescribed fee” in each case; and
- (b) Deleting the words “fee prescribed in the First Schedule to this Ordinance” from sections 17(6), 19(1), 32(1) and 68, and replacing them with the words -  
“prescribed fee” in each case; and
- (c) Deleting the words “appropriate fee set out in the First Schedule to this Ordinance” from sections 60(2), 66(2), and replacing them with the words -  
“prescribed fee” in each case; and
- (e) Deleting the words “such fee not exceeding \$6 as may be prescribed” from section 30(1)(b), and replacing them with the words “the prescribed fee”; and
- (f) Deleting the words “prescribed cost” from section 13(1), and replacing them with the words “prescribed fee”; and
- (g) Deleting the words “set out in the First Schedule to this Ordinance” from section 13(4), and replacing them with the words “prescribed under the Land Transport Authority Act 2007”; and
- (h) Deleting the words “at the appropriate rate chargeable under the First Schedule” from

section 19(1), and replacing them with the words “at the prescribed fee for each vehicle”;  
and

- (i) Deleting the words “appropriate fee set out in the First Schedule hereto” from section 59(d), and replacing them with the words “prescribed fee”.

**5. Fees for endorsement of international licences**

– Section 27 of the Principal Act is amended by inserting subsection (2A) as follows –

“(2A) The holder of an international driving permit (including any licence to drive a motor vehicle issued by an authority in an overseas country) shall pay the prescribed fee for an endorsement to drive in Samoa.”

**6. Period of validity of vehicle licences –** Section

11 of the Principal Act is amended by –

- (a) Deleting the words “so that it shall expire on the 31<sup>st</sup> day of March next after the issue thereof”;  
and

- (b) Inserting sub-section (2) as follows –

“(2) In accordance with a resolution of the Board, and in accordance with regulations made under the Land Transport Authority Act 2007, the period of validity of a vehicle licence may be for the 12 months next following the date of issue of the licence.”

**7. Period of validity of driving licences –** (1) Section

27 of the Principal Act is amended by deleting the words “until the 31st day of March next ensuing after the date of issue” from subsection (4), and replacing them with the words “for such period as is determined by the Board”.

(2) Section 32 of the Principal Act is amended by inserting subsection (3) as follows –

“(3) The period of any licence renewed under this section shall be that which is determined by the Board under section 27(4).”

## CHAPTER 13

### REQUIREMENTS FOR DRAFTING SUBORDINATE LEGISLATION

#### REGULATIONS

##### **13.1 Confirmation of the extent of the applicable regulation making power**

It is essential that all regulations purporting to be made under the authority of an Act are in fact consistent in every way with the authority provided for in the relevant Act.

This issue has not been heavily litigated in Samoa but it is vital that all regulations are drafted in accordance with the powers to make regulations contained in the law under which they are to be applied. As noted in [12.3] the regulation making power is generally drafted so as to provide a general all-embracing power to make regulations for any purpose associated with the effective implementation of the Act. It is common practice for Acts to also make specific reference to a range of matters about which regulations are contemplated.

Both the general regulation making power and the specific powers are to be considered to be an appropriate legislative basis for the making of Regulations.

##### **13.2 The Heading of Regulations**

An example of the standard format for the heading of Regulations is shown at the end of this Chapter.

This format should not be departed from.

###### **13.2.1 The Title**

It is preferable that the initial part of the title reflect the Act under which the Regulations are made. General titles that are not referable back to the title of the Act are to be avoided.

For example, if the regulations are made under the *Shipping Act 1998* and relate to small fishing vessels the titles should be **Shipping (Small Fishing Vessels) Regulations 20xx**, and not just Small Fishing Vessels Regulations 20xx.

###### **13.2.2 The Arrangement of Provisions**

The *Arrangement of Provisions* must be fully and correctly inserted at the heading of all draft Regulations. This should appear under the official logo of the Government of the Independent State of Samoa. A template which can be used for the drafting of Regulations is available in electronic form from the Office of the Attorney General.

The greatest care must be taken to ensure that the wording of the regulations and headings in the *Arrangement of Provisions* is identical to the titles and heading titles in the text of the draft Regulations.

### **13.2.3 Formal Statement of Promulgation**

Nearly all regulations shall be made by the Head of State, acting on the advice of Cabinet. The standard formalities for the promulgation of Regulations is in the following form –

**PURSUANT** to section xx of the xxx Act xxxx, **I, TUI ATUA TUPUA TAMASESE EFI**, Head of State, acting on the advice of Cabinet, **MAKE** the following Regulations:

**DATED** at Apia this                      day of    20xx

.....  
(Tui Atua Tupua Tamasese Efi)  
**HEAD OF STATE**

This format should not be departed from.

### **13.3 Preliminary Matters**

The formatting requirements for the heading and other introductory matters for draft Regulations must be observed. These are explained below and an example appears at the end of this Chapter. Many draft laws are submitted to the Office of the Attorney General in a form which fails to meet the requirements stated in this Handbook, and which do not contribute to the advancement of legislative reform in Samoa. These deficiencies are often evidenced in the introductory provisions of the draft.

#### **13.3.1 Title**

Unlike Acts, Regulations are not given a short title. Regulation 1 therefore is usually headed as –

“1. **Title** - These regulations shall be known as the xx (xxx) Regulations 20xx.”

### **13.3.2 Commencement**

Regulation 2 will often make provision for the commencement of the Regulations. However it is common practice for regulation 1 to deal with both the title and commencement in the following way –

- 1. Title and commencement** – (1) These regulations shall be known as the xx (xxx) Regulations 20xx.
- (2) These Regulations commence on the date they are made by the Head of State.

The above reflects the usual commencement provision and is consistent with section 8 of the *Regulations Ordinance 1953*.

It is permissible for provision to be made to defer commencement to a nominated date, or to be a date determined by the Minister by publication of a notice to that effect in the *Savali*. This latter option arrangement should only be applied if there are good grounds for delaying the commencement of the Regulations.

It is preferable for Regulation to commence on the date that they are made by the Head of State, as this removes later problems of proof that Regulations have in fact validly come into effect by publication of the notice.

It should be noted that section 8 of the *Regulations Ordinance 1953* states that -

“All regulations made after the coming into force of this section, which do not expressly state therein the date on which they are to come into force, shall come into force on the date on which they are made.”

### **13.3.3 Definitions**

Appropriate definitions must be determined and included in a specific provision of the Regulations. This provision should include a definition of “the Act” as being the Act under which the Regulations are made and which they seek to give greater effect too.

Section 7(2) of the *Acts Interpretation Act 1974* states that –

“Where an Act confers a power to make rules, regulations, orders, or other acts of authority, expressions used in any such rules, regulations, orders, or acts of authority shall, unless the contrary intention appears, have the same meanings as in the Act conferring the power”.

However, it is still permissible to re-state the definitions that appear in the Act under which the Regulations are made. This can avoid the need to refer back to the Act when the Regulations are read.

The standard form for the definition regulation is as follows –

2. **Interpretation** – In these Regulations, unless the contrary intention appears:  
“the Act” means the xx Act xxxx; etc etc

### **13.4 Amendment to regulations**

Regulations may be amended by other Regulations which clearly state that they have the effect of amending the specified Regulations.

In some cases Regulations have been amended by Acts. In such cases it is preferable that the amending Act include a provision which clearly validates the amendment of the Regulations as being validly made under the authority of the amending Act. And it may be appropriate in such rare cases for a provision to state that future amendments may be made by Regulations in the ordinary way.

The Road Transport Reform Act 2008 is an example of this.

### **13.5 Discretionary powers in regulations**

It is important to note that regulations may make provision for powers to be exercised by the Head of State, Ministers and any other persons or bodies under the authority of the regulations. This is the effect of section 24 of the *Acts Interpretation Act 1974*. Such provisions do not offend principles of the common law which restrict the exercise of delegated powers.

## **OTHER SUBORDINATE LEGISLATION**

### **Orders**

A number of Acts give powers to the Head of State, acting on the advice of Cabinet, and to Ministers to make Orders. Giving powers to the Head of State (to be exercised on the advice of Cabinet) requires essentially the same process as that which applies to the making of Regulations. It is therefore preferable for such powers to be exercised in the usual way by the making of Regulations under the authority of an Act. The power to make Orders is not particularly appropriate in such cases. An exception however is the power to apply Prohibition Orders under the *Customs Act*.

### **13.6 Appropriate use of Orders**

The exercise of the power by Ministers however provides a shorter (and less accountable) process to that which applies to Regulations. It is therefore necessary to consider whether it is appropriate for an Act to vest such a power in a Minister alone. This may be appropriate if –



- The Order involves the exercise of a relatively minor administrative power necessary for the proper application of a law under the Minister's responsibility.
- There is a need for a speedy action to be taken to effectively regulate or control something.
- The power falls under the authority of one Minister, and does not call for a collective decision to be made by Cabinet

In recent times a trend has emerged to permit Ministers to set fees and charges for government services and regulatory requirements (such as permit and licence fees) by the making of Orders. Such arrangements should be confirmed with Parliamentary Counsel at an early opportunity to confirm that it is appropriate in the circumstances to give such power to the Minister.

### 13.7 Some examples of Orders

The power to make Orders appears in the following laws –

- Agriculture, Forests and Fisheries Act 1959
- Bankruptcy Act 1908 (NZ)
- Broadcasting Ordinance 1959
- Civil List Act 1964
- Commissions of Inquiry Act 1964
- Customs Act 1977 – Importation Prohibition Notices and Orders
- Decimal Currency Act 1966
- Diplomatic Privileges and Immunities Act 1978
- District Courts Act 1969
- Fair Trading Act 1998
- Hotel Levies Act 1972
- Judicature Ordinance 1961
- Labour and Employment Act 1972
- Land and Titles Act 1981
- Land, Survey and Environment Act 1989
- National Provident Fund Act 1972
- Oaths, Affidavits and Declarations Act 1963
- Police Offences Ordinance 1961
- Post Office Act 1972
- Prisons Act 1967
- Samoa Trust Estates Corporation Reconstruction Act 1990
- Shops Ordinance 1961

Under the authority of the above laws the following are examples of Orders currently in force –

- Order Prohibiting the Export of Logs 1990 (made under the Agriculture, Forests and Fisheries Act 1959)
- Emergency Orders (made under the Constitution)
- Various Prohibition Orders (made under the Customs Act 1977)
- Importation of Parrots Prohibition Order 1958 (made under the Health Ordinance 1959)
- Hotel Levies Orders (made under the Hotel Levies Act 1972)

### 13.8 Form of Orders

The standard form of an Order is as shown in the example given at the end of this Chapter.

### **13.9 Content of Orders**

The content of all Orders must be strictly in accordance with the powers and requirements stated in the provision of the Act under which they are made. They should state the matter which is intended to be given effect by the Order in the most concise manner possible. They must not introduce any matter of substantive law that is not provided for in the relevant Act. An Order that breaches this strict requirement may be subject to challenge on the grounds that it was made outside the authority of the relevant authorising Act.

### **13.10 Other statutory instruments (Notices, Warrants and Proclamations)**

Guidance as to the form and content of Notices, Warrants and Proclamations made under Acts should be gained from the following examples –

- Warrants Authorising Payment out of Public Funds (made under the Audit Office Ordinance 1961)
- Extension of Broadcasting Hours Notice 1965 (made under the Broadcasting Ordinance 1959)
- Warrant of Appointment of Commissions of Inquiry (made under the Commissions of Inquiry Act 1964)
- Various Notices and Orders (made under the Customs Tariff Act 1975)
- Decimal Currency Proclamation (made under the Decimal Currency Act 1966)
- Various rules and proclamations (made under the Electoral Act 1963)
- Various Notices (made under the Immigration Act 2004)

### **RULES AND BY-LAWS**

Acts rarely make provision for the making of Rules and by-laws but it is certainly permissible in appropriate cases. This should be confirmed with Parliamentary Counsel at an early opportunity.

### **13.10 Confirmation of powers to make rules and by-laws**

Before Rules or by-laws are drafted under the authority of an Act it is essential to confirm the existence of that legal authority, and the extent of it.

No Rules or by-laws may be drafted without a clear legislative basis for them. And all such drafts must be strictly in accordance with the power that is given for them to be made.

### **13.11 Some examples of rules and by-laws**

The power to make rules and by-laws appears in the following laws –

- Administration Ordinance
- Bankruptcy Ordinance
- Credit Union Ordinance 1960
- Fisheries Act 1988
- Judgment Summonses Act 1965
- Judicature Ordinance 1961

Under the authority of the above laws the following are examples of rules and by-laws currently in force –

- Bankruptcy Rules 1983 (NZ) (made under the Bankruptcy Ordinance)
- Administration (Procedure) Rules 1980 (made under the Administration Ordinance)
- Judgment Summonses Rules and amendments to the rules (made under the Judgment Summonses Act 1965)
- Court of Appeal Rules (made under the Judicature Ordinance 1961)
- Credit Union Standard By-laws (made under the Credit Union Ordinance 1960)
- Various Fisheries by-laws (made under the Fisheries Act 1988)

### **13.12 Form and content of rules and by-laws**

There is not a great amount of precedent for the application of Rules and by-laws in Samoa. While it is true that a plain English drafting style must be applied to all laws drafted for Samoa, it is particularly essential that Rules and by-laws are formulated in such a way as to enable their effective application by the authorities who are empowered to apply and enforce them.

## EXAMPLE OF FORM OF REGULATIONS



### **ELECTRIC POWER CORPORATION (FURTHER AMENDED IMPOSITION OF TEMPORARY ADDITIONAL CHARGE) REGULATIONS (No.2) 2008**

#### **SAMOA**

##### **Arrangement of Provisions**

- |                                 |  |
|---------------------------------|--|
| 1. Short title and commencement | 2. Imposition of temporary additional charge |
|                                 | 3. Repeal                                    |

**PURSUANT** to section 51 of the Electric Power Corporation Act 1970, **I, TUI ATUA TUPUA TAMASESE EFI**, Head of State, acting on the advice of Cabinet, **MAKE** the following Regulations:

**DATED** this ..... day of.....2008

.....  
(Tui Atua Tupua Tamasese Efi)

**HEAD OF STATE**

#### **REGULATIONS**

**1. Short title and commencement** – (1) These Regulations may be cited as the Electric Power Corporation (Further Amended Imposition of Temporary Additional Charge) Regulations (No. 2) 2008.

(2) These Regulations commence on the 1<sup>st</sup> day of July 2008.

**2. Imposition of temporary additional charge** – A temporary additional charge of 37.6% is imposed on the total amount charged by the Corporation to its customers for the supply of electrical energy.

**3. Repeal** – The Electric Power Corporation (Further Amended Imposition of Temporary Additional Charge)

Regulations 2008 which commenced on the 1<sup>st</sup> day of June 2008 are repealed.

**FORM OF ORDER**



**SAMOA**

**[Title] ORDER – SECTION xx, xx ACT 19xx**

**I, TUI ATUA TUPUA TAMASESE EFI**, Head of State of the Independent State of Samoa, acting on the advice of Cabinet and pursuant to section xx of the xx Act 19xx (“the Act”), **ORDER** that:

1. xx
2. This Order comes into effect on the date it is made.

**DATED** at Apia this ..... day of  
..... 200x

.....  
(Tui Atua Tupua Tamasese Efi)  
**HEAD OF STATE**

Note : Any breach of this Order constitutes an offence under the Customs Act 1977 and makes the person liable to a heavy fine and confiscation of the goods.

## CHAPTER 14

### THE EXPLANATORY MEMORANDUM AND OTHER REPORTING REQUIREMENTS

#### *General Explanation*

The Explanatory Memorandum is an important part of every draft Bill.

#### *Precedents*

Every Act drafted and enacted in Samoa for at least the last 10 years has included an Explanatory Memorandum. The required form was clarified in 2007. When using precedents it is best to consider drafted Acts since 2007. The Office of the Attorney General can make precedents available to consultant drafters.

#### **14.1 When an Explanatory Memorandum is required**

##### *Acts of the Samoan Parliament*

An Explanatory Memorandum is required to be completed and provided for every draft Bill.

##### *Regulations and other subordinate legislation*

The Attorney General may require a brief statement of the purpose and key provisions of draft Regulations and other subordinate legislation to be provided. This may be used as part of Ministerial Briefs or Cabinet Submissions. This should be confirmed with Parliamentary Counsel before the drafting of Regulations and other subordinate legislation is completed.

#### **14.2 Purpose of the Explanatory Memorandum**

The purposes of the Explanatory Memorandum are to –

- Provide a general summary of the purpose and significance of a draft Bill
- Give a brief summary of the content of each drafted section of a proposed Act

The Explanatory Memorandum serves to generally explain a draft Bill (and each provision of the draft Bill) to the Ministers in Cabinet when the Bill is considered, and to the Members of Parliament when the Bill is presented.

The responsible Minister shall read each part of the Explanatory Memorandum when the Bill is being considered and adopted by the Legislative Assembly.

### 14.3 Form of the Explanatory Memorandum

Each Explanatory Memorandum must adhere to the required Form. This Form is comprised of –

- A single paragraph explaining the general purpose of the Act and its significance to government administration, existing laws and matters such as the implementation of Samoa’s international obligations (if relevant)
- A paragraph explaining in brief terms the effect of each clause of the draft Bill

The following is an example of an Explanatory Memorandum in the required Form –

#### **EXPLANATORY MEMORANDUM**

##### **WATER RESOURCES MANAGEMENT BILL 2008**

This Act repeals the Water Act 1965 and makes comprehensive provision in relation to the management, control and regulation of water resource in Samoa. The management of Samoa’s water resources shall be the responsibility of the Ministry of Natural Resources and Environment, and specifically its Water Resources Division. The water resource shall be managed on a sustainable basis. A comprehensive water management plan shall form the basis of the proper management of the resource on scientifically sound principles. This shall include all relevant policies and technical data, and the individual management plans for watershed and water catchment areas. A Water Resources Board shall be established to ensure that proper management of the water resource is achieved in the long term. Rights of State management and control are clearly stated. The major water using utilities (EPC, Samoa Water Authority and the Independent Water Supply Schemes) shall have rights to access water for their statutory functions. The Fire and Emergency Service shall have the right to use water for fire fighting and prevention purposes. All other persons who drill for water or who take water from river, streams and underground aquifers for commercial purposes must have a licence to do so. Licences shall control the amount of water which can be taken, and the rate at which it may be pumped out. Villages shall be empowered to make by-laws to protect water sources in their local areas.

**Clause 1** This Act shall be called the Water Resources Management Act 2008.

**Clause 2** This provides for definitions of certain words and terms used in the Act.

**Clause 3** The provisions of this Act shall bind the government.

**Clause 4** The water resources of Samoa must be managed and developed on a sustainable basis.

etc etc.

### 14.4 Other reporting requirements

The requirement to provide other reports shall vary. All consultant drafters should ensure that the Office of the Attorney General is provided with all relevant information and records which facilitate its role to finalise and certify a draft law. Anything arising from the drafting of a law should be considered as relevant if it may facilitate the final enactment or promulgation of the draft law.

#### **14.4.1 Record of consultations and consultation outcomes**

The drafting of every major law should involve broad consultation with all relevant government and community stakeholders. It is generally of critical importance that the Attorney General be able to identify the persons and agencies consulted during the drafting processes when required to brief the responsible Minister, the Cabinet or the Committee of Parliament responsible for reviewing draft Bills before the Legislative Assembly.

This important responsibility is assisted if the Attorney General is provided with a report which –

- Identifies all persons and agencies consulted during the drafting of a proposed law.
- Details the outcomes of the consultations and the provisions of a draft law which have been included or modified as a result of the consultations.

The provision of such a Report should be regarded as a general requirement and this should be confirmed with Parliamentary Counsel.

#### **14.4.2 General Report of Legislative Drafting**

A report on the drafting of all major legislation should be provided to the Attorney General together with the drafted law. This should briefly cover the following matters –

- The funding source.
- The context of the drafting as part of a development project.
- The persons who drafted or assisted in drafting the law.
- The source of the draft (i.e. is it based on a foreign law or has it been developed uniquely for Samoa).
- The general purpose of the law and its significance to Samoa.
- Details of Reports which have been referred to and the extent to which recommendations made in previous reports have been implemented by the draft law.
- Confirmation that it is in accordance with Samoa's Constitution, principles of human rights and Samoa's international obligations.
- The process of consultation.
- Any other matter which may facilitate its enactment or promulgation.

The provision of such a Report should be regarded as a general requirement and this should be confirmed with Parliamentary Counsel.



## CHAPTER 15

### CONFIDENTIALITY AND RELEASE OF DOCUMENTS

#### 15.1 General Considerations

The Government of Samoa applies the modern principles of transparency to its administrative processes. The Government is committed to the involvement of the community in law reform initiatives, and to the effective dissemination of information about laws and legal processes.

There is however a requirement for persons involved in law reform initiatives to appreciate the need to keep certain information and documents confidential, and to secure necessary approvals when certain documents and drafts are released to certain persons, or to the community as a whole.

#### 15.2 Confidential documents

Confidentiality shall attach to the following documents –

- (a) Any document produced or held by government which is deemed by Cabinet, a Minister, a relevant Chief Executive Officer or the Attorney General to be confidential.
- (b) Any government document which is headed “Confidential”.
- (c) Any document which is confidential by reason of any statutory provision to that effect (e.g. Documents relating to the international finance sector under the numerous laws applying to such arrangements. Section 3A of the National Provident Fund Act provides for confidentiality of certain Board Papers.).
- (d) Cabinet Submissions, deliberations and decisions until they are released by Cabinet.
- (e) Deliberations of Parliamentary Committees until the Report of the Committee’s Recommendations is considered by the Legislative Assembly.

Any document which falls into the above category should be treated as confidential until the release or use of the document is authorised by the relevant Ministry or government institution, or otherwise ascertained by the Attorney General to be a document for public release.

It must be remembered that effective stakeholder and community consultation during legislative reform processes can only be achieved by the timely release of drafts and related documents in a form which most effectively facilitates meaningful consultation.

### **15.3 Legal professional privilege**

The accepted legal principles of legal professional privilege apply in Samoa to communications between solicitors and their clients. These protections are rigidly enforced by the courts and should be kept in mind and respected by all persons involved in law reform projects.

It is possible that certain legal advice tendered by the AGO to any part of government during or affecting law reforms may attract the status of privileged information. This must be taken into account and must be respected. It is certainly not the norm but where any doubts arise the status of any legal advice or related documents must be clarified by the Attorney General. No such information or documentation should be released to any person without prior permission from the Attorney General.

This shall apply equally to any advice given by –

- (a) The legal officers of Ministries or agencies to their employers; and
- (b) External lawyers when they are retained to represent Government, or any Ministry or agency.

This is particularly important where litigation involving the government is current, anticipated or threatened, and where such litigation may relate in any way to the law reform project or initiative.

## APPENDIX A

### PRINCIPAL ROLES IN THE LEGISLATIVE PROCESS

- A.1 Ministries and agencies
- A.2 Office of the Attorney General
  - A.2.1 Attorney General
  - A.2.2 Parliamentary Counsel
  - A.2.3 Law Reform Commission
- A.3 Ministry of Finance – Aid Coordination Unit
- A.4 Ministers
- A.5 Cabinet
- A.6 The Clerk of the Legislative Assembly
- A.7 Legislative Assembly

#### **A.1 Ministries and agencies**

Government Ministries and agencies play key roles in every stage of the legislative process in Samoa. This role begins with the primary policy making responsibility, extends to many aspects of the implementation and management of legislative reform, and continues with on-going administrative, regulatory and enforcement roles after laws are brought into effect.

#### **A.2 Office of the Attorney General**

The Office of the Attorney General plays an advisory, supporting and/or supervisory role at every stage of the legislative process. In this way it is the relevant Ministry or agency and the AGO which have a role to play at every stage of the legislative process.

It should be clear from this, and always kept in mind, that the legislative drafting process works most efficiently when close communication is kept between Ministries and agencies and the AGO.

The specific roles of the AGO are summarised as follows -

##### **A.2.1 Attorney General**

Under Article 41 of the Constitution the Attorney General has the constitutional status of legal adviser to the Samoan government.

All officers of the AGO (including the Law Reform Commission) perform their legislative functions under the supervision of the Attorney General. In appropriate cases they will act on and with the authority of the Attorney General.

In the legislative process the Attorney General plays the following specific roles –

- The Attorney General has a role to play in relation to considering and approving legal implications arising from policy formulation.
- The Attorney General has authority to approve the legislative drafting handbook and thereby endorse and apply the legislative drafting requirements stated in the handbook.
- The Attorney General may, from time to time, formulate and apply legislative drafting guidelines and requirements which shall be included in the handbook.
- The Attorney General must review and approve all terms of references to be applied to consultant drafters.
- The Attorney General may nominate one or more officers of the AGO to work on legislative reform projects sponsored by Ministries and agencies.
- Some major issues arising during the drafting of legislation may be referred to the Attorney General, whose determinations on such matters shall be final and conclusive.
- The final vetting of draft laws shall be done by or under the authority of the Attorney General.
- The Attorney General issues a certificate for every approved draft law (both Acts and Regulations). This certificate shall indicate approval for the form and substance of the draft, and certify that the draft meets the needs of the government. The certificate will be sent to the relevant Minister, and a copy provided to the Ministry and the Clerk of the Legislative Assembly. The Certificate must be attached to the relevant Cabinet Submission.
- The Attorney General may provide advice to Ministries, agencies, Ministers, the Prime Minister, Cabinet and the relevant committee of the Legislative Assembly, as necessary.

### **A.2.2 Parliamentary Counsel**

Officers of the AGO holding the position of Parliamentary Counsel are the heads of the legislative division of the AGO.

In many instances the Parliamentary Counsel shall supervise, direct and manage aspects of the legislative process, and in so doing they shall act with the direct authority of the Attorney General. Under the authority of the Attorney General, Parliamentary Counsel may give directions applying to draft laws which determine matters such as –

- Confirmation of the need for legislative reform.
- Basic requirements relating to the nature, extent and form of a legislative reform.
- Requirement to provide Drafting Instructions or a Concept Brief to outline the purposes and objectives of the reforms, and the key provisions of the drafted laws.
- The need for prior Cabinet approval for a proposed legislative reform or for confirmation of any relevant policy.
- Approval for specific features proposed for draft laws.

- Consideration and possible approval for departures from the handbook requirements.
- Participation at stakeholder consultations.
- General management, supervision and direction of legislative reform process.
- Final consideration and approval/rejection of a draft.
- Recommendation to the Attorney General for a certificate to be issued.
- Briefings to Committees of the Legislative Assembly when directed by the Attorney General.

### **A.2.3 Law Reform Commission**

In 2002 a Law Reform Commission was established by Act of Parliament. The Commission was never constituted and in 2008 the Act was repealed and replaced by a new law establishing a Commission of a substantially different nature. When the new Commission is constituted it shall extend the government's legislative drafting capacity. It shall not have authority to pursue law reform on its own initiative. It shall act at the direction of the Prime Minister, Cabinet or the Attorney General and ensure that major law reform is undertaken with broad stakeholder consultation. In relation to each referral it shall ensure that a draft law is prepared in accordance with the processes and requirements noted in the legislative drafting handbook.

### **A.3 Ministry of Finance – Aid Coordination Unit**

The Aid Coordination Unit of the Ministry of Finance shall have a role to play if legislative reform is funded as part of a program of development assistance provided to the Government of Samoa by an international or regional development agency.

In such cases the Unit must be kept informed of the progress of legislative drafting at its various stages and must be invited to participate in consultations about the reforms, especially at meetings of government stakeholders.

### **A.4 Ministers**

The Minister of a sponsoring Ministry or agency has key roles to play in the legislative process, including –

- (a) Endorsement of the policy which underlies proposed legislative reform, and securing Cabinet approval of the policy.
- (b) Direction to the CEO to implement law reform activity.
- (c) Liaison with the Attorney General on key legal aspects and implications of proposed law reform.
- (d) Approval of draft laws for submission to Cabinet.
- (e) Approval of Cabinet Submissions, and presentation of Submissions on proposed law reform and draft laws to Cabinet.

- (f) Presentation of draft laws to the Legislative Assembly by the “readings” of the draft Bill.

## **A.5 Cabinet**

The roles of Cabinet in the legislative process are to –

- (a) Endorse law reform prior to the commencement of the legislative process, or at any stage of it. (This is preferable for major reforms and many minor reforms as it gives a clear mandate for the commencement of the legislative reform, and for the purpose and parameters of the reform).
- (b) All draft Bills must be submitted to Cabinet for approval, and they are then referred to the Legislative Assembly.
- (c) Draft Regulations must be submitted to Cabinet for approval, and they are then referred to the Head of State for promulgation.

## **A.6 The Clerk of the Legislative Assembly**

The Clerk of the Legislative Assembly has crucial roles to play at many stages of the legislative process. These include –

- The determination of style and formatting requirements for Bills and Acts so as to meet the expectations of the Legislative Assembly (these requirements shall be clearly stated in the legislative drafting handbook).
- Processing Bills which have received Cabinet approval for submission to the Legislative Assembly.
- Translating Bills into the Samoan language prior to their introduction into the Legislative Assembly.
- Translating of Regulations prior to the referral to the Head of State for promulgation.
- Facilitation of Committee hearings in relation to Bills, and preparing committee reports.
- Publication and sale of laws under the authority of the *Revision and Publication of Laws Act 2008*.
- Maintaining the integrity of Samoa’s laws by regulating their publication and distribution, and ensuring that backup copies are maintained securely.

## **A.7 Legislative Assembly**

### *Draft Bills*

All draft Bills are considered and debated by Parliament in accordance with the Standing Orders of the Legislative Assembly.

Most Bills are referred to Select Committees for consideration, and are then reported back to the Assembly (with or without amendments) for consideration in detail by the Assembly, and for final enactment at the third reading stage.

### *Regulations*

The Legislative Assembly does not play a role in the approval and promulgation of Regulations. However section 9 of the *Regulations Ordinance 1953* states –

**9. Regulations to be laid before Parliament** - All regulations made after the coming into force of this section shall be laid before Parliament within 28 days after the date of the making thereof if Parliament is then in session and, if not, shall be laid before Parliament within 28 days after the date of the commencement of the next ensuing session.

## **APPENDIX B**

### **THE ROLE OF MINISTRIES AND AGENCIES IN LEGISLATIVE PROCESSES**

- B.1 An overview of the roles of Ministries and Agencies
  - B.1.1 As policy makers
  - B.1.2 As proposers of legislative reform
  - B.1.3 As agents of legislative reform
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- B.2 The key Ministry and Agency Officers and their roles
  - B.2.1 The Minister
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#### **B.1 AN OVERVIEW OF THE ROLES OF MINISTRIES AND AGENCIES**

Government Ministries and agencies play key roles in every stage of the legislative process in Samoa. This role begins with the primary policy making responsibility, extends to many aspects of the implementation and management of legislative reform, and continues with on-going administrative, regulatory and enforcement roles after laws are brought into effect.

Only the AGO has roles at each of these stages, and so it is critical that close communication is maintained between Ministries and agencies, and the nominated officers of the AGO.

The Ministries and agencies have to following important roles to play: –

##### **B.1.1 As policy makers**

The sponsoring Ministry or agency has the role to formulate, develop and obtain approval for aspects of government policy that are relevant to that Ministry or agency.

As the key agency responsible for policy formulation the relevant Ministry or agency plays a critical role in the legislative process from its outset.

It is often said that policy must be formulated and approved before legislative reform is considered. While there is some merit in this, it is not universally true. Some legislative reform can precede the finalisation of policy, and in fact can provide a sound legal basis for the formulation and application of policy.



Where law reform relates to the regulatory authority of the Ministry or agency then there is certainly much to be gained by the formulation of policy covering the technical aspects of the regulatory regime. In this way any power to grant licences and permits for resource use or exploitation for example, can be based upon approved technical assessments and requirements.

There may be many advantages gained from referring draft policy and possible law reform to Cabinet for endorsement before the legislative drafting commences or is finalised. This can provide clear authority for the legislative drafting to be undertaken, and for its scope and substance.

In any event, the policy formulation role of Ministries and agencies is a crucial one, and shall shape the nature, structure, form and substance of any legislative outcome.

### **B.1.2 As proposers of legislative reform**

Ministries and agencies play the primary role in proposing legislative reform to support and assist the discharge of their functions and responsibilities.

In some cases however legislative reform shall be instigated by the Attorney General. This may arise particularly if a court proceeding has identified shortcomings in the law.

The Law Reform Commission shall become responsible for facilitating law reform identified by the Prime Minister, Cabinet or the Attorney General.

The Attorney General's Office may require that Drafting Instructions or a Concept Brief be provided to outline the purpose of objectives of the proposed reforms, and the key provisions of the draft law. The preparation of these documents is the responsibility of the sponsoring Ministry or agency.

### **B.1.3 As agents of legislative reform**

Officers of sponsoring Ministries and agencies should appreciate that they play a role as agents for legislative reform. In this way their roles include –

- Close liaison with the AGO (and with the Aid Coordination Unit of MOF, and the Law Reform Commission, if they have a role to play in the particular law reform).
- As the interface and major contact point for law reform project teams under broader development projects funded from external donor and development sources.
- Facilitation of necessary government and community consultation.
- Ensuring final compliance with all obligations of consultant drafters to the satisfaction of their Ministry, their Minister and the AGO.

### **B.1.4 As managers of legislative reform**

Officers of sponsoring Ministries and agencies should also appreciate that they play key management roles in the legislative processes. In this context their roles include

- Ensuring that consultant drafters comply with the applicable terms of reference.
- Ensuring that consultant drafters are aware of the legislative drafting requirements applied by the handbook.
- Ensuring that consultant drafters undertake adequate consultations with relevant government and community stakeholders.
- Ensuring that the nominated officers of the AGO are kept informed and involved.
- Ensuring that internal and AGO approval is given to drafts before consultant drafters are released of their obligations.

### **B.1.5 As implementers**

Nearly every law requires that appropriate implementation action is taken to effectively apply the provisions of the law. Some laws require implementation action immediately, and others involve long term strategies and action for effective implementation. In nearly every case this responsibility shall lie with the sponsoring Ministry or agency.

### **B.1.6 As regulators**

Some laws involve the establishment and application of regulatory processes. In nearly every case these responsibilities shall lie with the sponsoring Ministry or agency.

### **B.1.7 As enforcers**

Many laws require that appropriate action is taken to effectively enforce the obligations and processes that apply under them. In nearly every case this responsibility shall lie with the sponsoring Ministry or agency. This will often be done on the advice and with the support of the AGO.

## **B.2 THE KEY MINISTRY AND AGENCY OFFICERS AND THEIR ROLES**

In every case the appropriate chain of authority within a Ministry or agency applies in every way to the legislative process. Ministers are ultimately responsible and accountable for the effective discharge of the functions, powers and responsibilities of their Ministries (and related agencies). The relevant CEO has authority over the day to day management of his or her officers, including the roles that they play in the legislative processes.

The current Attorney General recognises the rights of all Ministries and agencies to give instructions in relation to legislative reform. Where these are lawful and appropriate the AGO shall comply with such instructions. It must be accepted however that in the discharge of the constitutional role of the Attorney General, the

Attorney General may, from time to time, give directions and impose requirements that relate to the work being undertaken as part of legislative reform initiatives from Ministries and agencies.

Some of the key roles to be performed within a Ministry or agency are identified below.

### **B.2.1 The Minister**

The Minister has overall responsibility to ensure that the Ministry or agency effectively performs its functions and responsibilities, including those which relate to legislative reform.

The many specific roles of the Minister of the sponsoring Ministry or agency in the legislative process are noted in B.4.

### **B.2.2 The Chief Executive Officer**

The day to day management roles of the relevant Chief Executive Officer in the legislative process can include –

- Liaison with the Aid Coordination Unit of the Ministry of Finance (if relevant to the reform).
- Effective communication with the AGO, including the provision of instructions and information concerning the objectives and outcomes of the reform.
- Liaison with other Ministries and agencies to ensure adequate consultations and inputs, and effective consideration of them in the context of the reform.
- Advice to the Minister on the progress of the reform.
- Giving final approvals in relation to certain elements or aspects of drafts so that the AGO can proceed to complete and approve final drafts.
- Preparation of a Cabinet Submission and supporting briefs and reports.
- Supervision of the progress of approved drafts to and through the Legislative Assembly.
- Provision of information and briefs for the Minister to facilitate enactment of the law.
- The making of appropriate arrangements for the effective implementation and enforcement of approved reforms.

### **B.2.3 Other Senior Officers**

All senior officers of sponsoring Ministries and agencies should ensure that they participate effectively in consultations held during the legislative process. They should take particular care to review drafts and ensure that matters relevant to their particular areas of responsibility are addressed in the law in an appropriate and effective manner.

#### **B.2.4 The Legal Officer**

The legal officer of the sponsoring Ministry or agency should ensure that –

- (a) The need for law reform is confirmed by the AGO.
- (b) The AGO is provided with adequate Drafting Instructions or a Concept Brief if officers of the AGO are to prepare the legislative drafts.
- (c) The Terms of Reference for consultant drafters are appropriate and approved by the AGO, if the services of such consultants are retained.
- (d) Proper and effective selection criteria are applied to the appointment of consultant drafters.
- (e) Proper liaison is maintained with Parliamentary Counsel (and the Law Reform Commission, if relevant to the reform) at all stages of the process.
- (f) Consultant drafters –
  - Comply with their contractual obligations.
  - Conform to their terms of reference.
  - Undertake appropriate and adequate stakeholder consultations.
  - Comply with the drafting requirements stated by the handbook.
  - Produce an adequate draft law within the required timeframe.
  - Are required to assist in the finalisation of the drafted outputs even if this involves some work outside of the timeframe of the project.
- (g) The AGO is provided with correct versions (in electronic form and hard copy) of the draft law, the explanatory memorandum and other requirements such as a review of relevant laws, a report on consultation outcomes and any other reports required by the AGO.

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